

COMPREHENSIVE ISLAMIC JURISPRUDENCE

◆ According to the Qur'an and Authentic Sunnah ◆

(Ad-Darrariyy al-Mudiyyah Sharh Ad-Durar Al-Bahiyyah)

الدراري المضية شرح الدرر البهية

Al-Imam Muhammad bin 'Aliy
ASH-SHAWKANI
1173-1255 H

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and Salmah binti Younus

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About the Author
Al-Imam Ash-Shawkani

His Birth



He is Muhammad bin 'Aliy bin Muhammad bin Abdillah – may Allah shower blessings on him. The Imam was born in one of the towns of Shawkan – by which he later took the ascription, Ash-Shawkani - on Monday, 28th Dhul-Qa'dah, 1172 AH, into a family well-known for scholarship and devotion to the Deen.

His Education



He is Muhammad bin 'Aliy bin Muhammad bin Abdillah – may Allah shower blessings on him. The Imam was born in one of the towns of Shawkan – by which he later took the ascription, Ash-Shawkani - on Monday, 28th Dhul-Qa'dah, 1172 AH, into a family well-known for scholarship and devotion to the *Deen*.

Al-Imam Ash-Shawkani became dedicated to studying the various sciences of the *Deen* from an early age in life. He learnt the reading of the Qur'an from a number of teachers and completed it with the renowned scholar of *Fiqh* during his time, Shaykh Hasan bin Abdillah al-Habl. He proceeded and studied the Sciences of Recitals from many others among the distinguished experts on Recitals in the city of San'a.

Similarly, he studied and attained high level of proficiency in Arabic Grammar, Morphology and the various branches of Rhetoric and Arabic Literature, including the different aspects of History, Arabic prose and poetry from the major scholars and experts in these fields during his time. He also learnt and became well-grounded in the different branches of the Science of Hadeeth, *Usul al-Fiqh* and *Fiqh* itself having studied and accompanied the great scholar of *Fiqh* during the time, *Al-'Allamah* Ahmad bin Muhammad al-Harraziy for about 13 years.

One of the most distinguishing highlight in the manner this great scholar

attained scholarship was that he memorized the texts he studied with his teachers before or immediately after studying them!

Al-Imam Ash-Shawkani – may Allah shower blessings on him - became well-established and illustrious among the scholars of the various branches of knowledge and their students. He was upon the methodology of studying and ascertaining the authenticity of the texts and depending on authentic texts and the views deduced therefrom, rather than blind-following the opinions of Schools of Jurisprudence even when they clearly contradict authentic narrations from the Prophet ﷺ.

His Works



Allah - the Almighty and Sublime - granted Al-Imam Ash-Shawkani the success of authoring many books that count as major works on the various branches of knowledge. They include:

His work on the *Tafseer*, *Fath al-Qadeer Al-Jami'u bayna Fannay al-Riwayah wad-Dirayah mina at-Tafseer* in 4 big volumes.

- *Nayl al-Awtaar* in 8 volumes; an extensive commentary on *Al-Muntaqa mina al-Akhbar* originally compiled by Majid ad-Deen Ibn Taimiyyah on *Fiqh*.
- *Al-Fawaaid al-Majmu'ah* in a single big volume he compiled on inauthentic and fabricated narrations ascribed to the Prophet (*sallallahu alayhi wasallam*).
- *Bugyat al-Areeb*, a book on Arabic grammar he authored regarding the grammar masterpiece, *Mugnee al-Labeeb* by Ibn Hisham.
- *Irshad al-Fuhul*; a major reference work *Usul al-Fiqh*
- *Al-Qawl al-Mufeed fee Hukm al-Taqleed* which he authored on the prohibition of blind-following opinions; worst still when such views contradict authentic narrations.

Ad-Darrariyy al-Mudiyyah



This is the book with you - dear reader -, by Al-Imam Ash-Shawkani – may

Allah shower His blessings on him -. The Imam had compiled a concise text titled *Ad-Durar al-Bahiyyah fee al-Masaail al-Fiqhiyyah* in which he outlined the most preponderant views in the matters of *Fiqh* based on authentic proofs and text-based reasoning, and as Shaykh Siddiq Hasan Khan – may Allah shower blessings on him – described it -, "leaving out those of it (i.e. the opinions) that are mere thoughts since they amount to the hear-says of it and without paying attention to those that became popular (of the opinions) since the truth alone deserves to be followed..."

Shaykh Siddiq Hasan Khan continued regarding *ad-Durar al-Bahiyyah*, "The resemblance of this concise piece to the comprehensive works among the Books of *Fiqh* is like the metal mold to the dross as is known to whosoever is deeply rooted in knowledge...".[i]

In his own remarks, Shaykh Muhammad Subhiy al-Hallaq, the teacher of Hadith and Fiqh in Yemen well-known for his efforts in tracing the manuscripts of the works of Al-Imam ash-Shawkaniy, editing and publishing them, said, "The book, *Ad-Durar al-Bahiyyah fi al-Masaail al-Fiqhiyyah* is of the best books of *Fiqh* not sticking to (and blind-following) any particular school in its form and content...".[ii]

Subsequently, some among the people of knowledge during his time requested Al-Imam Ash-Shawkani to briefly explain *ad-Durar al-Bahiyyah* and open up its treasures to the benefit of scholars and students. He granted the request and authored this book with you, *Ad-Darrariy al-Mudiyyah Sharh ad-Durar al-Bahiyyah.*

In *Ad-Darrariy al-Mudiyyah*, Al-Imam Ash-Shawkani – may Allah shower blessings on him – provided the authentic texts upon which his chosen views in *ad-Durar al-Bahiyyah* were based, citing the sources of the narrations, affirming their authenticity and reliability as proofs and giving very pithy notes where necessary to aid further understanding of the points he established.

His Death



Al-Imam Ash-Shawkani passed away – may Allah shower His blessings on him – on Wednesday, 27th Jumadah al-Aakhirah 1250 AH.

i *At-Ta'liqat ar-Radiyyah 'alaa ar-Rawdat an-Nadiyyah* (1/81)

ii *Al-Adillat ar-Radiyyah li Matni ad-Durar al-Bahiyyah* pg. 8

Publisher's Note

Imam Muhammad Ali al-Shawkani's contribution to the Islamic field is highly recognized by all scholars after him, in regards to his profound and sound knowledge in Tafsir, Hadith, Fiqh and Usool al Fiqh, just to name a few.

The book in your hand is one of the most valuable addition to Islamic jurisprudence. The Imam himself, practiced and held the position of a jurist / judge under a government whose rule and legislation was based on the Quran and Sunnah.

Another key aspect of this work is that Imam Muhammad Ali al-Shawkani also added explanatory notes and references to his own work, whereby he mentioned the opinions of prominent scholars of the past and of his time including the four famous noble Imams.

This book has been published by many respective publishers worldwide in its original language, Arabic. However, as suggested by our beloved brother, Sheikh Abu Nasir (May Allah preserve him) we have taken the initiative to render it into the English language also. We decided to pick the edition that was published by Dar Ibn Hazm, Lebanon, and reviewed by Sheikh Muhammad Subhi bin Hasan Hallaq ﴿حفظه الله﴾.

Herewith are some methods for you, our dear readers, to cross-reference this book with the original work, i.e. for you to refer to other sources of reference (books):

1. This work includes 31 books starting with The Book of Purification (كتاب الطهارة) and ends with The Book of Jihad and History (كتاب الجهاد و السير) and in every book, there are chapters or categories. So, if you read in Arabic Al-Baab or Al-Fasl, we have translated that as chapter to avoid confusion. More importantly, we have kept all titles (i.e. the books, chapters or sections) in its original form as written by Imam al-Shawkani.

2. The beginning of each book or chapter starts with the original text of the Imam and is followed by his own explanation of the text.

3. All the evidences used in the book from the Quran and Ahadith shall be presented in both Arabic and English translation with takhreej (authentication of hadith according to the science of hadith).

4. For the translation of the ayat of the Quran, we have used different reputable translations according to the relevancy of the subject and its chosen words.

5. Our respected translator has also added some value to it by including some scholarly notes and clarifications where necessary.

6. In this work we have kept the Arabic tile of the book and the chapter transliterated in its original language for benefiting the student of knowledge.

Finally, we, at Dakwah Corner Bookstore are more than pleased and grateful to Allah (The Almighty) for giving us this great honour to be involved in this project. We are also utmost thankful to all of our brothers and sisters who have contributed to this project. May Allah rewards them all abundantly.

Please accept our sincere apology if there are any unintentional mistakes from our side. We hope that you will notify us via e-mail and we will definitely take it into the consideration on time and make the required corrections in the subsequent edition.

Farid Ullah bin Ahmed Hussain
Chief Executive Officer
DAKWAH CORNER BOOKSTORE
Kuala Lumpur

1 كتاب الطَّهارة
Book of Purification

باب أقسام المياه
Chapter 1.1 Rulings on Water

Water that is regarded as being clean and suitable for purification will not cease to have those two qualities except when its smell, colour and taste change due to the effect of impurities. As for the factor of colour, it will cease to become suitable water when pure things mix with it and its colour changes absolutely. And there is no difference with respect to little or much water, or what is more than two pots[1] or less, and whether it flows or it is stagnant, or whether it is used or not.

Explanation:

This section involves a number of issues:

One: There is no difference of opinions about the fact that water is clean and suitable for purification; in fact the Book and the Sunnah have both mentioned that fact. Just as the proofs from these sources indicate that, there is also Ijma (Consensus) over it. So also Al-Asl (Islamic basis), Azh-Zhahir (Obviousness) and Al-Baraah (Freedom from liability) indicate that; it is basically known that water is clean and suitable for purification, no controversy about that, so also it is obvious that water is clean and suitable for purification, and its freedom from the liability of impurities is as well an indication.

His words: ...will not cease to have those two qualities... that is, the quality of its being clean and the quality of its being suitable for purification.

1 It is referred to as Qullatayn; an approximation of which is given as 160 litres of water. [Translator].

His words: ...except when its smell, colour, and taste change due to the effect of impurities.

That is the second issue in the section; that nothing will make water cease from having the two qualities except what might affect one of the three factors among impurities, nothing else.

It is this view that is clearer and stronger. The proof for that is what was recorded by Ahmad, who as well authenticated it, Abu Dawud, At-Tirmidhi, who also graded it as hasan, An-Nasai, Ibn Majah, Al-Daraqutni, Al-Baihaqi, Al-Hakim, who also authenticated it, Yahya bin Main, who too graded it as authentic, and Ibn Hazm ﴿رحمه الله﴾, from the hadith of Abu Sa'id ﴿رضي الله عنه﴾ who said:

O Messenger of Allah, should we perform ablution from Budaah Well? A well which menstrual things, dog flesh and dirt are flung. Then the Messenger of Allah ﴿ﷺ﴾ said:

الْمَاءُ طَهُورٌ لَا يُنَجِّسُهُ شَيْءٌ.

Water is regarded as being clean, nothing can make it impure.

Ibn Al-Qattan ﴿رحمه الله﴾ was of the opinion that the hadith has a hidden defect (as regard its authenticity). There are many opinions with respect to the names of many Companions of the Prophet ﴿ﷺ﴾ and the Followers, that however does not necessitate the claim of anonymity (the hadith is said to have). Even Ibn Al-Qattan ﴿رحمه الله﴾ himself said after regarding the hadith as having a hidden defect: It has a better route than this; then he mentioned the route from Abu Sa'id ﴿رضي الله عنه﴾.

The proof has been established over the authentication of those who authenticated the hadith among the scholars.

The hadith has supportive proofs; such as the hadith of Sahl bin Sad ﴿رضي الله عنه﴾ with Al-Daraqutni, the hadith of Ibn Abbas ﴿رضي الله عنهما﴾ with Ahmad, Ibn Khuzaymah, Ibn Hibban; and the hadith of 'A'ishah ﴿رضي الله عنها﴾ with At-Tabarani in Al-Ausat, Abu Yala, Al-Bazzar, and Ibn As-Sakan, all of which are like the hadith of Abu Sa'id ﴿رضي الله عنه﴾. However, Al-Daraqutni recorded it with an additional as it has come in the hadith of Thawban ﴿رضي الله عنه﴾ in this wording:

الْمَاءُ طَهُورٌ لَا يُنَجِّسُهُ شَيْءٌ إِلاَّ مَا غَلَبَ عَلَى رِيحِهِ أَوْ طَعْمِهِ

Water is regarded as being clean; nothing can make it impure except what dominates its smell or taste.

Ibn Majah too recorded it with an addition, so also At-Tabarani in the hadith of Abu Umamah ﷺ in this wording:

إِنَّ الْمَاءَ طَهُورٌ إلا أَنْ تغَيَّرَ رِيحُهُ أَوْ لَوْنُهُ أَوْ طَعْمُهُ بِنَجَاسَةٍ تُحَدَّثُ فِيْهِ

Indeed water is regarded as being clean except when its smell, or colour, or taste is made to change by an impurity that falls into it.

The chain of the above two narrations has a fellow who cannot be taken as a proof.

The People of Hadith are unanimous as to the weakness of the addition but a consensus has come over what it contains (of message) as Ibn Al-Mundhir ﷺ reports, so also Ibn Al-Mulaqqin ﷺ in Al-Badr Al-Munir, and Al-Mahdi in Al-Bahr. Thus, those who consider Ijma (consensus) acceptable will approve the addition as being tenable, and those who do not consider it acceptable will only see it beneficial; that it has become what scholars have agreed over its meaning, and accepted. It is from that perspective that it is taken as a proof, not from the perspective of the Ijma over it.

His words: As for the factor of colour, it will cease to become water when pure things mix with it and its colour changes absolutely.

This is the third issue under the section, and it is in this perspective: that water which is made permissible for us in purification is such that it has an absolute quality of water, which cannot be ascribed to what might mix with it. Therefore, if anything mixes with it, then it becomes imperative that it is ascribed to the thing, as it is said, for instance, rose water or what is similar to that. This kind of water that is ascribed to rose cannot be called water absolutely, such that it will be said that it is suitable for purification in the understanding of the Qur'an and Sunnah, as Allah the Almighty said:

مَاءً طَهُورًا

Clean water [Al-Furqan: 48].

It has as well come in the authentic Sunnah:

الْمَاءُ طَهُور.

Water is regarded as being clean...

Thus with that, such water ceases to be suitable for purification though it does not cease to be clean because what has mixed with it is clean – and when two pure things mix together, that does not necessitate the two ceasing from having the quality that each of them possesses before they mix together.

His words: And there is no difference with respect to little or much water.

This is the fourth issue under the section. What is intended by little or much water is as regard the difference of opinions among the People of Knowledge after they had agreed that whenever any of the three qualities of water is changed then the water ceases to be clean. Some say that much water is the one that reaches the level of two pots while little one is whatever is less than that, due to what was recorded by Ahmad and the Collectors of the Sunan [i.e. Abu Dawud, At-Tirmidhi, An-Nasai and Ibn Majah], so also Al-Shafi'i, Ibn Khuzaymah, Ibn Hibban, Al-Hakim, Al-Daraqutni, Al-Baihaqi ﷺ, Al-Hakim authenticated it on the precepts of the Two Shaykhs (Al-Bukhari and Muslim) in the hadith of Abdullah bin Umar bin Al-Khattab ﷺ who said: I heard the Messenger of Allah ﷺ when he was being asked about water of the desert which carnivores and other animals drink from, the Messenger of Allah ﷺ said:

إِذَا كَانَ الْمَاءُ قُلَّتَيْنِ لَمْ يَحْمِلْ الْخَبَثَ

When water is contained in two pots, it cannot bear impurities.

In the version of Ahmad it reads:

لَمْ يُنَجِّسْهُ شَيْءٌ

Nothing can render it impure.

In the version of Abu Dawud ﷺ it reads:

فإنَّه لا ينجُسُ

It cannot become impure.

Ibn Hibban reported the like of the version above, so also Al-Hakim. Ibn Manda ﷺ said: The chain of the hadith of two pots is upon the conditions of Muslim. End of quote.

But there is collision (Al-Idtirab) in the chain and context of the hadith as explained in its respective places (in the study of hadith) while some have tried to answer the question of the claim of collision in the hadith.

The hadith thus indicates that if water reaches the level of two pots, it will not bear impurities.

But if the water is less than two pots, it may bear impurities; but as stated in the hadith Water is regarded as being clean, nothing can render it impure the consensus of the people of knowledge has come over this addition. Thus, the hadith of the two pots will be understood in that context such that it will be said that water that reaches the level of two pots will not in any way bear impurities except when one of its qualities (colour, smell, and taste) is affected by the impurity. Then such water can bear impurity as can be observed through the sense. There is no contradiction between the hadith of the two pots and the addition that got the sympathy of the consensus of the scholars.

As for whatever is less than the two pots of water, it is liable to bearing impurities

However there is nothing in the statement (above) that implies that it must bear impurities (if less than two pots) nor that whatever impurity it might bear makes cease from being clean, because the impurity that can make water to become impure is the one that can affect one of its qualities or all of them; not the impurity that does not cause any change.

The conclusion is that what is implied in the hadith of the two pots is that whatever is less than the two pots can bear impurities. The benefit from it therefore is that that is the limit which if there occurs any impurity in the water, it can affect the water.

As for the assertion that it can make the water cease being clean, that is not implied in the hadith. Also there is no connection between water that can bear impurity and the filth that can make water to cease from being clean because the Lawgiver has negated impurity from water in the absolute sense as it has come in the hadith of Abu Sa'id ﷺ that was earlier mentioned. So also in what has been brought has a supportive proof that negates impurity from water that reaches the level of two pots as it has come in the hadith of Abdullah bin Umar ﷺ that was also earlier mentioned. The rule is that negation in words is the most profound manner of establishing a generality.

He said in the first one: Nothing can render it impure; and in the second he said – as it has come in that chain – Nothing can render it impure. That thus implies that all water on the surface of the earth is clean except what might have been clearly exempted from this generality. That will make it clear that such water has become impure as it has occurred in the addition upon which there is a consensus, it came in the manner of an exemption from the hadith. Therefore it will be regarded as one of the pertinent specific ruling in comparison to the hadith of Abu Sa'id ﷺ. And if compared to the hadith of Abdullah bin Umar ﷺ; it is an extraneous specific rule, if to consider the most prevailing opinion in the Principles of Jurisprudence that says generality is absolutely built upon the specific.

Therefore, upon this precept, there is no negation between the implied meaning of the hadith of two pots and the rest of the Ahadith (over the issue); rather it could be said with regard to that: I water is less than two pots and bears impurities then the smell of such water must change or its colour or its taste. This is what can make the water to be regarded as being impure, or not having the quality of being regarded as clean, but if the water bears an impurity that cannot change its qualities, then such cannot be regarded as being impure.

Some have tried to determine the level of water that can be less than two pots (that will be regarded as having the tendency of bearing impurities), but many are of the opinion that two pots is the limit, such as Al-Shafi'i and his

companions, so also An-Nasir and Al-Mansur bi-llah from the family of the Prophet ﷺ.

Some said the limit of water less than the two pots is the one that can be said anybody using it is using an impurity for purification; while others said the level that it cannot be said anyone using it is using impurity for purification. Among those who have the latter opinion was Ibn Umar ﷺ, Mujahid ﷺ and some people from the family of the Prophet ﷺ such Al-Haadi, Al-Muayyad bi-llah and Abu Talib.

That has also been reported from Shafii, Abu Hanifah and Ahmad bin Hanbal ﷺ; I do not know whether this report is authentic from them or not. The schools-of-thought of these people are well-documented in the books of their followers; whoever wants to find out should visit those books.

Those who have the above opinion do cite proof in Allah the Almighty's Statement:

وَالرُّجْزَ فَاهْجُرْ

And keep away from Ar-Rujz (the idols)! [Al-Muddaththir: 5]

They also cite the hadith on what to be said when one wakes up, and when one enters the house, as well as the Ahadith forbidding urinating into stagnant water; all these are contained in the Sahih but they do not indicate what is desired. Even if we agreed that one of them has a particular indication, that indication will be regarded as being limited by what has been earlier mentioned; this is so because worship can only take place with suppositions in accordance with the Shari'ah. That it is not far to say that an intelligent person will not think of using impurity via water except when its mass mixes with water or its smell, or colour or taste in a very clear manner as might be indicated by the supposition. And there is no doubt in the fact that any water upon such a description is impure because when mixing takes place with the mass of dirt, the person performing ablution will be regarded as using an actual dirt.

If the mixing takes place in the smell or the colour or the taste, there is no contradiction between the former and the latter schools-of-thought whose view we said is clearer.

The conclusion is that they intend with their statement that if what is thought by using the water containing impurity is actually the impurity present, the quantity of the water will be small, but if not, its quantity is large and more than

the actual dirt – its smell, colour and taste. Therefore, there is no contradiction between the former and the latter schools-of-thought whose view we said is clearer, except from the perspective that the people of the latter opinion consider the thought, while the people of the former opinion consider the sign. But it is known that when the supposition comes from other than the people of uncertainties and doubt, it will not oppose the sign in an issue like this.

If they intend the use of the actual dirt only and not water without considering the quantity of water, whether small or large, this is a separate school-of-thought different from the latter, but it is clear that they intend the first meaning. That is indicated by the fact that there is a consensus that whatever changes the colour of water, its smell, or taste of dirt necessitates the impurity of the water as earlier stated.

Also, because of the fact the people of this school-of-thought are regarded as part of the consensus; in fact that is well stated by the author of Al-Bahr as earlier mentioned, it is certain that they intended the first meaning; I mean what is more than the actual dirt, the smell, colour and taste whether it is established or not. Thus, there is no contradiction between the two schools-of-thought because those who belong to the first school-of-thought do not deny the fact that intending the use of impurity via pure water containing it necessitates the water ceasing to be clean, in addition to its ceasing being so when only the smell, colour or taste changes; ponder over this, it is highly beneficial.

In fact, the main issue upon which this work rests with regard to causing a merger between the different schools-of-thought on water, and between the proofs indicating that in this picture I have summarized it, I have not come across anyone among the people of knowledge who has arrived on it. The issue is among the most difficult ones wherein every verifier stumbles, and where every adept researcher looks stupid when going over its matters. I have settled the matter in my other works – in different ways. I specifically said much about it in Teebu-n-Nashr. Some people of knowledge had cited proofs for the like of this opinion with hadith like:

اسْتَفْتِ قَلْبَكَ وَإِنْ أَفْتَاكَ الْمُفْتُوْنَ

Consult your mind even if the Muftis give your verdicts.

And this hadith:

دعْ مَا يَرِيبُكَ إِلَى مَا لَا يَرِيبُكَ

Leave that which you are in doubt of for that which you are certain about.

What can be derived from the two hadith is that being careful when having a thought is very important.

The people of this school-of-thought make it imperative that such a supposition should be worked with without any qualifications; and you have come to know that the proofs of the first school-of-thought, as we summarized them, indicate the view of the second school-of-thought, thus the hope is far from the like of the two hadith: consult your mind... and leave that which you are in doubt of... this is not as expected.

If a person says what he intends is mere citing of proof over acting with suppositions without considering the matter; it will be said that proofs that make it permissible to work with suppositions are many in the Qur'an and Sunnah but proofs that say suppositions should not be worked with are more. So also is reliance on the hadith of when dog licks the vessels, and the hadith of what to be said when one wakes from sleep, or similar Ahadith; they do not indicate all that.

Also there are lots of opinions as regard the limit of the large quantity of water, among which is the opinion that it is sea-like water, some said a collection of water which if a side of it is shaken the other side will not shake, some consider the water surface; they said any water whose surface is such and such; there are several other opinions.

All these opinions have no traces of knowledge; rather they fall short of narrations that can be accepted as well as intelligent study.

His words: Whether it flows or it is stagnant.

What that means is that even when water is stagnant – though there is a prohibition as regard using it for purification when it so – that does not make it to cease from being pure because it will return to its being regarded as being pure when it merely moves.

There are proofs that indicate that stagnant water cannot be used for purification so far it remains stagnant; that is due to the hadith of Abu Hurairah ﷺ that is recorded by Muslim and others; that the Prophet ﷺ said:

لا يَغْتَسِل أَحَدُكُمْ فِي الْمَاءِ الدَّائِمِ وَهُوَ جُنُبٌ.

None of you should take bath in the stagnant water while he is in a state of sexual impurity.

They said: O Abu Hurairah, what should we do? He replied: He should take some handfuls from it.

In the version of Ahmad ﴿ﷺ﴾ it reads:

لَا يَبُولَنَّ أَحَدُكُمْ فِي الْمَاءِ الدَّائِمِ وَلَا يَغْتَسِلُ فِيهِ مِنْ جَنَابَةٍ

None of you should urinate into the stagnant water neither should he take bath in it while in the state of sexual impurity.

In the version of Al-Bukhari ﴿ﷺ﴾ it reads:

لَا يَبُولَنَّ أَحَدُكُمْ فِي الْمَاءِ الدَّائِمِ الَّذِي لَا يَجْرِي ثُمَّ يَغْتَسِلُ فِيهِ.

None of you should urinate into the stagnant water –that does not flow – then take bath in it.

In the version of At-Tirmidhi ﴿ﷺ﴾ it reads:

ثُمَّ يَتَوَضَّأُ مِنْهُ.

…then (he) performs ablution in it.

There are other similar narrations (like the above) which all indicate that it is prohibited to urinate into the stagnant water, on one side; and that it is prohibited

to take bath in it, on another side. And there is a prohibition regarding merging the two acts. But it is not correct to say that the two narrations on the separate sides are limited by the narration that merges the two acts because urinating into water – alone – is not permissible this thus indicates that taking bath in it or performing ablution in it without urinating into it is equally not permissible.

Therefore, whoever wants to perform purification and does not see except stagnant water should try to shake the water so that it will not be regarded as being stagnant then he should perform ablution from it.

As for Abu Hurairah ﷺ, he had interpreted the prohibition to mean submerging in stagnant water (during purification) that was why he said when he was asked what to be done that the person doing purification should just get some handfuls from the water. But that is not present when performing ablution because there is no submerging in water in the process rather it borders on acts of taking handfuls of water from the beginning; thus what is better is that the water should be shaken before one begins the purification process then one should go on with the purification.

However the majority of the scholars are of the opposite opinion to what the narrations (earlier cited) indicate, thus they do not differentiate between flowing water or stagnant one. There are some among them who are of the opinion that the narrations can be interpreted to mean that the act is merely frowned at. But there is no point in that opinion. Some of them say sea-like water is exempted from the consensus

The clearer opinion however is that it is not permissible to take a bath in stagnant water, but when it flows, its primary description of purity goes back to it.

The above is the fifth issue under the section.

His words: Whether it is used or not.

This is the sixth issue under the section:

The People of Knowledge disagree as to the issue of used water for any of the acts of worship; that does that stop it from being regarded as pure or not. It was reported from many of the descendants, and from Ahmad bin Hanbal, Al-Layth, Al-Auzai ﷺ, also from Al-Shafi'i and Malik in one of the two narrations from each of them; also from Abu Hanifah ﷺ in a narration from him, that used water is not suitable for purification due to the preceding hadith prohibiting taking bath in stagnant water. However, there is no proof for that in the hadith because the import of prohibiting using stagnant water for purification is not because of the fact that the water has been used rather

it is because it is not flowing. There is no connection between the reason of stagnancy and the fact that the water has been used.

They also sought proof in the prohibition with regard to using left-over water of ablution of a woman. Meanwhile, the reason in that does not border on the fact that the water has been used as that will be established later, Allah willing. Therefore, citing proof in that is not also sufficient because of other possible meanings, for if it had been because the water has been used, the prohibition would not have been limited to a husband and wife, rather the prohibition would have come from the Lawgiver with respect to all persons that leave water after ablution.

Also among their proofs is that it is said that some Salaf used to complete their purification with Tayammum[2] when water is not sufficient not with drops of water during ablution. This proof is also defective; it is not proper to infer a ruling from its like in establishing a point of Shari'ah therefore anybody citing this as a proof ought to make things clear, that is this act of using Tayammum to complete purification done by all the Salaf or some of them? To say all of them is not tenable, and to say he does not know whom among the Salaf did so is also erroneous; it requires being definite. Also, concerning the consensus that is regarded as proof in this case for those who see proof in the consensus; they have cited proofs that are not applicable (to the issue); the like of that is the hadith of washing the hands three times after one wakes up from sleep before the hands are dipped into vessels; and similar proofs.

The truth however is that used water is suitable for purification if to go by the ruling of lack of evidence against an established fact, also if to work with proofs that say water is to be regarded as being pure.

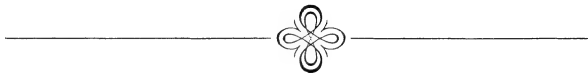
A number of Salaf and Khalaf are of this opinion; Ibn Hazm ﴿رحمه الله﴾ attributed the opinion to Atta, Sufyan At-Thauri, Abu Thawr and all the scholars of Dhahiriyah[3] Enclave ﴿رحمهم الله﴾. A similar thing was reported from Al-Hasan Al-Basri, Az-Zuhri, An-Nakhai, Malik, Al-Shafi'i, Abu Hanifah in one of the narrations from the last three mentioned above ﴿رحمهم الله﴾.

2 An ablution performed with soil.

3 That is, scholars who hold to the literal meanings of the texts of the Shari'ah.

باب أحكام النّجاسات

Chapter 1.2 Rulings on Impurities



Impurities include human defecation in the absolute sense, his urine except a breastfeeding boy, dog's saliva, animal droppings, menstrual blood, flesh of swine; any other things beside those are not agreed upon – what can be said about them is that they are to be basically regarded as pure; nothing can make them to cease to be pure except an authentic factor not contradicted with what has an equal footing with or supersedes it.

Explanation:

As for human defecation and urine being regarded as impurities, there are clear-cut authentic reports indicating that, and their being impurities fall within what is unreservedly accepted in the Deen as that will not be hidden from a person who researches into the evidences of the Shari'ah and the way of life of the era of the Prophet ﷺ. The fact that the two are sometimes regarded as being pure cannot rule out this fact.

As for the human defecation, it is as it has come in the hadith of Abu Hurairah رضي الله عنه that the Messenger of Allah ﷺ said:

إِذَا وَطِئَ أَحَدُكُمْ بِنَعْلِهِ الْأَذَى فَإِنَّ التُّرَابَ لَهُ طَهُورٌ

When any of you marches his footwear upon dirt, verily the sand will purify it.

In another version it reads:

إِذَا وَطِئَ الأَذَىَ بِخُفَّيْهِ فَطَهُوْرُهُمَا التُّرَابُ

When any of you marches his leather socks upon dirt, verily the sand will purify both.

Abu Dawud ﷺ recorded both the narrations, so also Ibn Sakan, Al-Hakim, Al-Baihaqi ﷺ; there is a difference of opinions over it with regard to its chain on the path of Al-Awzai ﷺ.

In addition, Ahmad, Abu Dawud, Al-Hakim, and Ibn Hibban recorded it back to Abu Sa'id Al-Khudri ﷺ that the Prophet ﷺ said:

إِذا جَاءَ أَحَدُكُمُ المَسْجِدَ فَلْيَقْلِبْ نَعْلَيْهِ ولْيَنْظُرْ فِيهِمَا فَإِنْ رَأَى خَبَثًا فَلْيَمْسَحْهُ بِالْأَرْضِ، ثُمَّ لِيُصَلِّ فِيهِمَا

When any of you comes to the masjid, let him turn his footwear over and examine them; if he sees dirt he should rub it over the earth then he should pray in them.

There is difference of opinions as to whether the Follower who narrated the hadith reported it on the authority of a Companion, to the Messenger of Allah ﷺ or he related it directly from the Messenger of Allah ﷺ. But Abu Hatim favoured the opinion that says that the Follower mentioned the Companion from whom he heard the hadith, who heard from the Messenger of Allah ﷺ.

The Collectors of the Sunan recorded it from the narrations of Umm Salamah ﷺ, linked to the Messenger of Allah ﷺ with this version:

يُطَهِّرُهُ مَا بَعْدَهُ.

What comes after it will purify it.

Also its like has come from Anas ﷺ as found with Al-Baihaqi but with a weak chain. So also is another narration from a woman from the Clan of Abdul-Ashhal; also found with Al-Baihaqi ﷺ.

The fact that sand is made to accompany the act of rubbing so that it will clean the dirt better further confirms its impurity.

As for the relaxed ruling that has come over cleaning urine; it is as it has been established that the Prophet ﷺ commanded that a bucket of water is poured over the urine of the Bedouin (who came and urinated in his masjid). The

report can be found in the Sahihayn (Al-Bukhari and Muslim), and others beside them, in the hadith of Abu Hurairah and Anas bin Malik ﷺ.

As for what is other than human faeces and urine, there is no consensus over any aspect of it. There are varying evidences; there are some that indicate that they are clean such as urine of camel – it has come in the Sahihayn and others that the Prophet ﷺ commanded the Uraniyyuun to drink from camel urine.

Also on the issue of the purity of the camel urine is this report:

لاَ بَأْسَ بِبَوْلِ مَا يُؤكَلُ لَحْمُهُ.

There is nothing wrong with the urine of whatever animal its flesh is eaten.

The hadith is recorded by Al-Daraqutni in the hadith of Jabir and Al-Bara ﷺ; however there is Amr bin Al-Husayn Al-Uqayli in its chain who is extremely weak.

Meanwhile there is a narration that indicates the impurity of animal droppings as it has come in Sahih Al-Bukhari and others that the Messenger of Allah ﷺ said regarding it that it is a riks; a riks, in the Arabic Language, is a filth.

At-Taymi ﷺ reported that the animal dropping to be considered as filth is that of a horse, mule and donkey; Ibn Khuzaymah however added in his own version that the Prophet ﷺ said: It is riks; a donkey dung.

It will not be hidden from you that the basis of everything is that it is regarded as pure because saying something is filthy makes it imperative upon the servants of Allah to have a ruling of that over it, and as regards this issue there is none. Also, the exempting rule is that there is no responsibility in a vague text until its actual ruling is established from it. Ascribing rulings to the Shari'ah without establishing proofs for them are not fair than sins, is like when established rulings are rendered null, and void. Each can therefore be regarded as issuing a statement about Allah without His Authority or rendering null and void what He has legislated for His slaves, without proof.

As for saying urine will be regarded as impure after the weaning years in male; then that is due to this hadith:

يُغْسَلُ مِنْ بَوْلِ الْجَارِيَةِ وَيُرَشُّ مِنْ بَوْلِ الْغُلَامِ.

Urine of a breastfeeding girl should be washed while that of a boy should be wetted.

Abu Dawud recorded it, so also An-Nasai, Ibn Majah, Al-Bazzar and Ibn Khuzaymah ﷺ in the hadith of Abu As-Samh, a servant of the Messenger of Allah ﷺ. Al-Hakim ﷺ graded the hadith to be authentic.

In addition, Ahmad and At-Tirmidhi recorded another hadith, which was graded as hasan by the former, on the authority of Ali bin Abi Talib ﷺ, that the Messenger of Allah ﷺ said:

بَوْلُ الْغُلَامِ الرَّضِيعِ يُنْضَحُ وَبَوْلُ الْجَارِيَةِ يُغْسَلُ.

Urine of a breastfeeding boy should be wetted and urine of a girl should be washed.

Ibn Majah ﷺ also recorded it, so also Abu Dawud ﷺ, with an authentic chain but only linked to Ali bin Abi Talib ﷺ.

Ahmad, Abu Dawud, Ibn Majah, Ibn Khuzaymah, Ibn Hibban, and At-Tabarani recorded another hadith on the authority of Umm Al-Fadl, Lubaabah bint Al-Harith ﷺ who said: Al-Husayn, the son of Ali, urinated on the lap of the Prophet ﷺ; then I said: O Messenger of Allah, give me your cloth and put on another cloth so that I will help wash it. Then he ﷺ said:

إِنَّمَا يُنْضَحُ مِنْ بَوْلِ الذَّكَرِ وَيُغْسَلُ مِنْ بَوْلِ الْأُنْثَى.

Urine of a breastfeeding male is only wetted while that of a female is washed.

It has also been established in the Sahihayn and some others in the hadith of Umm Qays the daughter of Mihsan ﷺ that she brought her kid who had not

been eating food to the Messenger of Allah ﷺ, the kid then urinated on his cloth ﷺ, he then called for water and wetted (the spots); he did not wash it.

Also in Sahih Al-Bukhari, on the authority of 'A'ishah ﷺ who said: A kid was brought to the Messenger of Allah ﷺ for Tahnik[4], the kid then urinated on him and he followed it with water.

And in Sahih Muslim, she ﷺ said: Kids were being brought to the Messenger of Allah ﷺ, he would invoke blessings (of Allah) on them and perform Tahnik for them; but a kid was brought to him, who then urinated over him ﷺ, he called for water and followed the spot of the urine with it; he did not wash it.

This makes it clear that he ﷺ did not wash the spot, therefore following the spot with water could merely mean an act of wetting the spot as it is stated in the two other hadiths, or a mere act of pouring water over the spot with washing.

In summary therefore, the clarity of words from him ﷺ with regard to what is imperative on the matter is what ought to be followed, because it is a declaration to his Ummah; thus his act, if it is viewed contradictory to his statement, cannot be held to oppose his statement ﷺ.

A number of scholars are of the opinion that it is sufficient to wet the spot of urine of a breastfeeding male not that of a female; among them were Ali (bin Abi Talib), Umm Salamah, Ath-Thawri, Al-Awzai, An-Nakhai, Dawud, Ibn Wahb, Atta, Al-Hasan, Az-Zuhri, Ahmad, Ishaq, and Malik = in a narration ﷺ; this is the truth in which there is no doubt.

But some People of Knowledge are of the opinion that wetting both (the breastfeeding male and female spots of urine) is sufficient; this has been reported from Malik then from Al-Shafi'i and Al-Awzai ﷺ. This however contradicts what has come in the authentic reports with regard to the difference between a breastfeeding boy's urine and that of a girl.

The Hanafis and the rest of the scholars of Kufah are of the view that both are of the same level in terms of the imperativeness of washing; this is reported of the descendants (of the Prophet ﷺ) too. This school-of-thought = like the one mentioned above = contradicts the authentic evidences.

Those who share this third view have cited proofs in the reports that have come over the general impurity of urine. It will not be hidden to you that the evidences in respect of the breastfeeding boy has come to give a ruling that differentiate the urine of a breastfeeding boy from that of a girl.

4 An act of rubbing chewed date on the gum of a newly-born baby. [Translator].

As for the analogy that has been made with regard the urine of a breastfeeding boy over that of a female, it will not be hidden from you as well that such an analogy contradicts the text; such a deduction is faulty.

Ibn Hazm ﴿رحمه الله﴾ stands out from those opinions by saying the urine of a male should be wetted irrespective of such male (old or young); he did not consider the specification that was earlier made that it is the urine of a breastfeeding male that should be wetted. What is imperative however is that the absolute ruling should be limited by the specifying one.

His words: And dog's saliva.

It has been established in the Sahihayn and others on the authority of Abu Hurairah ﴿رضي الله عنه﴾ that the Messenger of Allah ﴿ﷺ﴾ said:

إِذَا وَلَغَ الْكَلْبُ فِي إِنَاءِ أَحَدِكُمْ فَلْيَغْسِلْهُ سَبْعًا.

When a dog drinks from the vessel of any of you, he should wash it seven times.

The line of it is also established from both of them (i.e. Al-Bukhari and Muslim), on the authority of Abdullah bin Mughaffal ﴿رضي الله عنه﴾.

All that indicates the filthiness of the dog's saliva; this is what is desired here. Talk on the different views between those who act upon what is apparent in the evidences and those who see the sufficiency of washing the vessels three times; the different views are well-known. This however does not rule out the filthiness of the dog's saliva because the fact that it is regarded as a filthy is what necessitates the washing. Also this has nothing to do with what we are discussing – the additional effort of using sand to wash any vessel a dog drinks from as it has occurred in the Ahadith of the section in the Sahihayn and others - what is intended here is nothing but establishing the fact that dog's saliva is impure not the manner of its purification; that is discussed elsewhere.

His words: Animal droppings.

The proof for the filthiness of animal dropping was earlier indicated in the statement of the Messenger of Allah ﴿ﷺ﴾ as regard the animal droppings: It is riks; riks in the Arabic Language is a filth; therefore animal dropping is filthy; this is what is desired here. We have earlier mentioned At-Taymi's view on limiting that to the droppings of a horse, mule, and donkey.

His words: Menstrual blood.

The proof for that is what has been established with Ahmad, Abu Dawud and At-Tirmidhi in the hadith of Khawlah, the daughter of Yassar, ﴿ﷺ﴾ who said: O Messenger of Allah, I have just a cloth and I used to perform my menstrual period in it, (what should I do)? He replied ﴿ﷺ﴾:

فَإِذَا طَهُرْتِ فَاغْسِلِي مَوْضِعَ الدَّمِ ثُمَّ صَلِّي فِيهِ.

When you become clean, wash the spot of the blood then pray in it (that is, the cloth).

She ﴿ﷺ﴾ then said: O Messenger of Allah, what if the blood traits remain? He replied ﴿ﷺ﴾:

يَكْفِيكِ الْمَاءُ وَلَا يَضُرُّكِ أَثَرُهُ.

The water (washing) suffices you; the blood trait is insignificant.

There is Ibn Laiah in its chain.

Ahmad, Abu Dawud, An-Nasai, Ibn Majah, Ibn Khuzaymah and Ibn Hibban reported from the hadith of Umm Qays, the daughter of Mihsan, ﴿ﷺ﴾; from the Messenger of Allah ﴿ﷺ﴾, with this version:

حُكِّيهِ بِضِلْعٍ وَاغْسِلِيهِ بِمَاءٍ وَسِدْرٍ.

Scrape it with the fingers and wash it with water and lotus leaves.

Ibn Al-Qattaan ﴿ﷺ﴾ said: The chain of the hadith is very authentic.

And in the Sahihayn and others, in the hadith of Asma the daughter of Abu Bakr ﴿ﷺ﴾ who said: A woman came to the Prophet ﴿ﷺ﴾ and said: If menstrual blood touches the cloth of one of us (women), what should she do? He replied ﴿ﷺ﴾:

تَحُتُّهُ ثُمَّ تَقْرُصهُ بِالْمَاءِ ثُمّ تُصَلِّي فِيهِ.

Let her scrape it then soak (the cloth) with water after which she should wet the spots of the menstrual blood and pray in it (the cloth).

The fact that it is commanded that the menstrual bold should be washed and scraped with the fingers indicates the reason of its being impure. Even if scholars disagree as to the manner of rendering it clean, that does not rule out its being regarded as filth.

As for the rest of the blood, there are varying and contradicting proofs over it; the basic ruling of lack of responsibility will be made use of until a clear proof will come to remove the existing and clear contradiction, or a proof on the same footing with the one on ground.

If the pronoun in Allah's Statement:

فَإِنَّهُ رِجْسٌ

...verily it is impure...

[If the pronoun] is in reference to all what has preceded in the Noble Verse, that is, dead animal, blood that gushed out, the flesh of swine, etc. that could have meant that blood that gushes out is also impure so also dead animal, but there is nothing in the Verse that suggests that meaning, rather there is an existing difference of opinions with the scholars over whether the pronoun goes back to all the items or the closer one to it. What is however apparent is the fact that it is the closer item that it refers to, and that is the flesh of swine (pork), also because of the singular form of the pronoun.

It is because of this that we come to the strong conclusion here that it is only the flesh of swine that is impure, not a dead animal and non-menstrual blood. This clarification is important because a report has come which indicates that what is prohibited in dead animal is its consumption; as it has come in the Sahih in this version:

إِنَّمَا حَرُمَ مِنَ المَيْتَةِ أَكْلُهَا.

It is only the consumption of the dead animal that is prohibited.

Whoever wants to verify the better opinion in the outstanding controversy on the like of this pronoun mentioned in the Verse should visit what the scholars of Usuul have mentioned with regard to a standing restriction that comes after a sentence containing a lot of items.

His words: Flesh of swine.

What indicates its filthiness is what has been shortly mentioned of the Noble Verse.

His words: Any other things beside those are not agreed upon – what can be said about them is that they are to be basically regarded as pure; nothing can make them to cease to be pure except an authentic factor not affected by what has an equal footing with it or what supersedes it.

Explanation:

I say: Know that the basic ruling is that those other things are regarded as pure as established from the detailed and sectional parts of the Pure Shari'ah. There is no doubt as regard the fact that the ruling that something is impure is establishing a binding injunction over the servants (of Allah) while the basic principle is that they should be free from that, most especially in matters of general effect. The Messenger of Allah ﷺ has indeed directed us to be silent over matters Allah is silent about; he said such matters constitute pardon (from Allah).

Therefore, whatever has no proof of it being impurity, it is not for anyone among the servants of Allah to rule for it as such whether merely from his defective thought, or by erroneously making evidence for it as some People of Knowledge claim, merely on thought, that whatever is prohibited by Allah also takes the ruling of impurity. This claim is one of the most unfounded ones; the fact that something is prohibited does mean it is impure, either by the effect of conformity, correspondence, or resemblance. For instance, that intoxicants, dead animals, and blood are prohibited does them impure.

It was as if the Lawgiver (the Messenger of Allah ﷺ) was aware of the possibility of this wrong notion from some of his followers that he guided them to what would remove it saying:

إِنَّمَا حُرِمَ مِنَ المَيْتَةِ أَكْلُهَا.

What is prohibited of the dead animal is its consumption.

If mere prohibition of something will necessitate it being unclean, then Allah's Words:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ

Forbidden to you (for marriage) are: Your mothers... [Nisa: 23]

It would have implied that all the categories of women mentioned in the Verse are unclean while it is known that a Muslim is not unclean whether living or dead, as it is established in an authentic narration[5].

So also will it be said that specific things that have been prohibited will be regarded as unclean while by Consensus all those are clean; such include posts and arrows (used as fetishes), so also are plants and fruits that primarily intoxicate.

Even when you say that when something is clearly declared filthy or dirty it is not but to indicate its filthiness or dirtiness as it is applied to the filthiness of animal droppings and flesh of swine, why don't you then make the same conclusion as regard intoxicants that Allah said about:

إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ

Intoxicants, gambling, AlAnsab, and AlAzlam (arrows for seeking luck or decision) are filth ... [Al-Maidah: 90].

I say: Mentioning the intoxicants here alongside posts and arrows (as filths) is a

5 Muslim (363).

factor that explains that the filth meant is not what it is understood to be under the Islamic rulings; so also are Allah's Words below:

إِنَّمَا الْمُشْرِكُونَ نَجَسٌ

Verily, the Mushrikun (polytheists, pagans, idolaters, disbelievers in the Oneness of Allah, and in the message of Muhammad) are Najasun (impure). [At-Taubah: 28].

Authentic proofs have indicated that the bodies of the polytheists are not fifth; such as the proofs that indicate that their slaughtered animals and food can be eaten, so also that it is permissible to perform ablution with their vessels – and to eat in them; so also is the permissibility to host them in the masjid –, all these indicate that the filthiness being referred to as regard them in the mentioned Verse has another meaning. In fact, the meaning of that has come from the Lawgiver in what no additional explanation is needed; the Messenger of Allah ﷺ said about Thaqeef Delegation when he hosted them in the masjid:

لَيْسَ عَلَى الْأَرْضِ مِنْ أَنْجَاسِ الْقَوْمِ شَيْءٌ إِنَّمَا أَنْجَاسُهُمْ عَلَى أَنْفُسِهِمْ.

There is nothing of the people's filthiness on the ground, indeed their filthiness is in them.

That thus indicates that the filthiness referred to is in judgment not physical; acts of worship are as regard what are physical.

As for something which a proof has come over its actual filthiness but confronted by a stronger one, there is no doubt that a stronger proof will be worked with. But if they are of the same footing, the basic principle is not to engage in any worship with such contradictions until there is another proof that is free of incongruence, or a proof that is clearer.

In summary, what is obligatory upon a just person is that he should be cautious; he should not wade into this arena except with a legislated proof.

Indeed, I have explained in my other works such as Sharh Al-Muntaqa and Hashiyyah Ash-Shifa all matters that have things to do with impurities; what I have written therein suffices; any interested person can go back to those works.

باب تطهير النّجَاسَات

Chapter 1.3 Cleaning the Impurities



Whatever becomes impure will not become clean until it is washed such that no actual dirt remains with it; whether in colour, odour nor taste. Footwear can become clean when rubbed against the earth; so also, transformation (Al-Istihalah) makes an impure thing clean since no judgment of filthiness can be passed over it again (after the transformation). Moreover, whatever cannot be washed, water should be poured over it or (that the filthy content should be) emptied until there will remain no trait of dirt. Water is ordinarily used for purification; nothing stands its place except with permission from the Lawgiver.

Explanation:

I say: When there is a specific thing mentioned by the Shari'ah for purifying what is unclean, it is that thing that must be adhered to without shifting attention to other than it, either by adding to it or reducing from it. Just as it has come that when the footwear are dirty, they can only be made clean by rubbing them against the earth; what indicates that had earlier been mentioned.

Also, the manner of purifying whatever is stained by the menstrual blood had been mentioned, so also the ruling regarding the dog's saliva.

In a nutshell, whatever the Shari'ah has taught us how it is purified; we must adhere to such manner of purification strictly.

But whatever the Shari'ah says is filthy but the manner of purifying it is not stated, it is imperative that we seek the manner of removing the actual dirt until there remains neither the odour, nor the colour or taste of the dirt, because when the odour of the dirt or its taste can still be perceived it implies that a part of the actual dirt still remains even when none of its mass or colour remains apparent. This is because the presence of the odour is an indicator of the presence of what has the odour; so also the presence of the taste.

As for transformation, when something transforms to another thing such that the description of the former changes completely in colour, smell and taste; like when human excrement is burnt into ashes, then that has lost the description that makes the Shari'ah to say it is filthy. This is the truth about this matter, though there are differences of opinions over it.

Whatever cannot be washed when becomes impure such as the land and well,

the manner of purifying them is by pouring water over them, or by emptying the dirty content so that there will remain no trait of the filth because if it were to remain, then it will become duty-bound to remove what remains of the dirt. However, this only applies to the dirt that has mass and colour.

As for the like of urine, what has come in the Shari'ah is that a bucket of water should be poured over it; when that is done, the land that has been made dirty by the urine is been purified.

As for the assertion that the basic thing used for purification is water, the Book of Allah and the Sunnah of the Messenger ﷺ have declared it in an absolute manner without any restriction of meaning; in fact the statement of the Messenger of Allah ﷺ, water is pure, guides to what we have mentioned, a guidance supported by the principles of the Knowledge of Meaning and the Fundamentals.

But when it is established in the Shari'ah that something can be purified with other than water such as saying footwear can be cleaned by the earth – or what is similar, then water will be held as not being specific in purifying such filth; it is what is other than water that will be made use of. This is the truth.

The majority of the scholars are of the opinion that water is what is specifically used in cleaning dirt. But Abu Hanifah and Abu Yusuf ﷺ are of the opinion that t is permissible to purify all dirt with all (forms of) pure liquid; that is also the opinion of Ad-Dai, a member of the family of the Messenger of Allah ﷺ.

This opinion of the majority is refuted by the fact that it is established in the Shari'ah that purification is done by other than water, if what they meant is that only water used for purification.

Also Abu Hanifah ﷺ and those with him are refuted by saying establishing what has not come in the Shari'ah as a purifier, or cleaning something in a manner other than the manner established by the Shari'ah is rejected.

باب قضاء الحاجة

Chapter 1.4 Relieving Oneself



It is upon the person easing himself to conceal himself such that he will be closer [to the ground]; and he should be away from people's sight, or that he should enter a toilet. He should also refrain from talking and being in-company of sacred things. He should also refrain from places the Shari'ah has said is not good for the act of passing excreta or a place considered unsuitable customarily. He should also not face the Qiblah nor turn his back towards it. He should clean himself with three clean pieces of stone, or anything that can replace them. It is recommended that he should seek refuge in Allah before he begins the act, seeks His forgiveness, and praise Him when he finishes.

Explanation:

I say: As for the legitimacy of concealing oneself until one comes closer to the ground when passing excreta, that is due to what has come of evidence indicating the obligation of concealing one's nakedness in general and specified manners, except when a necessity calls for what is opposite. Among such is that one should not expose his nakedness when easing except when has squatted. Ahmad, Abu Dawud, Ibn Majah, Ibn Hibban, Al-Hakim and Al-Baihaqi ﷺ reported in the hadith of Abu Hurairah ﷺ in this wording that:



Whoever goes to the place of easing himself should conceal himself (from the people).

As for staying away from people's sight, this is due to what the Collectors of the Sunan recorded and held authentic by At-Tirmidhi, in the hadith of Jabir (bin Abdillah) ﷺ who said: We went out in company of the Prophet ﷺ on a journey, he would not ease himself except that he would hide himself from people's sight.

In the version of Abu Dawud, Jabir ﷺ said: Anytime he ﷺ wanted to ease himself, he would go away until none would be able to see him.

The men of the narration are sound except Ismail bin Abdul-Malik Al-Kufi; there are some minor worrying comments against him.

However, if anyone wants to ease himself in a building having a toilet, he only needs to enter even if it is closer to people as it will be mentioned later in the hadith of Ibn Umar ﷺ.

As for remaining silent (when easing oneself), it is due to this hadith:

لَا يَخْرُجُ الرَّجُلَانِ يَضْرِبَانِ الْغَائِطَ كَاشِفَيْنِ عَوْرَتِهِمَا يَتَحَدَّثَانِ فَإِنَّ اللَّهَ يَمْقُتُ عَلَى ذَلِكَ.

No two men should go out easing themselves exposing their nakedness and engaging in discussion in the process; indeed Allah, the Almighty and the Exalted, abhors such an act.

Ahmad recorded the hadith, so also Abu Dawud and Ibn Majah, from the reports Abu Sa'id (Al-Khudri) ﷺ. Ibn As-Sakan recorded its like and declared it to be authentic from the reports Jabir bin Abdillah ﷺ.

As for not being in-company of what is sacred, that is due to the hadith of Anas bin Maalik ﷺ that was recorded by the Collectors of the Sunan and rated authentic by At-Tirmidhi, Al-Mundhiri and Ibn Daqiq Al-Eid ﷺ; that anytime the Prophet ﷺ enter the place he wanted to ease himself, he would remove his ring. The person that declared the hadith as being weak did not come with sufficient proofs.[6]

As for staying away from places where the Shari'ah or custom says are not suitable for passing excreta, narrations have come from the Messenger of Allah ﷺ over that, among them is the hadith of Abu Hurairah ﷺ that can be found in Sahih Muslim, Musnad Ahmad, Sunan Abi Dawud that he ﷺ said:

اتَّقُوا اللَّعَّانَيْنِ

Be wary of two things that can bring curse.

6 Though this hadith is considered weak by the majority of scholars, past and present, those who held that it is suitable for proof have made evidence with it on this issue because the ring of the Prophet ﷺ contained the inscription "Muhammad Rasulullah". [Editor]

They replied: What are those two things that can bring curse O Messenger of Allah?

He ﷺ then replied:

الَّذِي يَتَخَلَّى فِي طَرِيقِ النَّاسِ أَوْ فِي ظِلِّهِمْ.

He that defecates on people's path or under their shade

Another hadith is that of Muadh bin Jabal ﷺ that can be found with Abu Dawud, Ibn Majah, Al-Hakim and Ibn As-Sakan ﷺ, and that was held authentic by the last two, that the Messenger of Allah ﷺ said:

اتَّقُوا الْمَلَاعِنَ الثَّلَاثَ الْبَرَازَ فِي الْمَوَارِدِ وَقَارِعَةِ الطَّرِيقِ وَالظِّلِّ.

Be wary of three things that may bring curse: Defecating in watering places, footpath, and (people's) shade.

The hadith above is said to be defective because it is from the path of Abu Sa'id Al-Humayri from Muadh ﷺ, the latter never heard from the former.

There are some other narrations in the section but they are not free of negative comments.

The Shari'ah has also forbidden that defecation is passed into holes; that is deduced from the hadith of Abdullah bin Sarjis ﷺ who said that the Messenger of Allah ﷺ forbade that one should urinate into holes. Ahmad, An-Nasai, Abu Dawud, Al-Hakim, Al-Baihaqi; the narration is said to be defective because it is from the narration of Qatadah ﷺ from Abdullah bin Sarjis ﷺ; Qatadah ﷺ never heard from Ibn Sarjis ﷺ. Ali bin Al-Madini was however of the opinion that Qatadah ﷺ actually heard from Abdullah bin Sarjis ﷺ. Ibn Khuzaymah and Ibn As-Sakan are also of the opinion that the hadith is authentic.

Among the hadith is what Ahmad and the Collectors of Sunan recorded from the hadith of Abdullah bin Al-Mughaffal ﷺ from the Prophet ﷺ who said:

لَا يَبُولَنَّ أَحَدُكُمْ فِي مُسْتَحَمِّهِ ثُمَّ يَتَوَضَّأُ فِيهِ فَإِنَّ عَامَّةَ الْوَسْوَاسِ مِنْهُ.

None of you should urinate where he takes baths then still performs his ablution there; verily most (satanic) whisperings come from that.

Another hadith is that which is recorded by Muslim, Ahmad, An-Nasai and Ibn Majah back to Jabir (bin Abdillah) ﷺ that the Prophet ﷺ forbade that one should urinate into stagnant water.

As for where the custom of the people has said is not suitable for passing excreta that will be due to the fact that the act will harm the people if done, this follows the principle that whatever can lead to what is not permissible is also not permissible.

As for the forbiddance of facing the Qiblah or turning the back towards it when passing excreta, narrations have come over that, among them are those that can be found in the Sahihayn and other than them, on the authority of Ayyub ﷺ, in this wording:

إِذَا أَتَيْتُمُ الْغَائِطَ فَلَا تَسْتَقْبِلُوا الْقِبْلَةَ وَلَا تَسْتَدْبِرُوهَا وَلَكِنْ شَرِّقُوا أَوْ غَرِّبُوا.

When you go to ease yourself, do not face the Qiblah or turn your back towards it but turn eastwards or westwards.

Muslim recorded the like of the hadith, so also some other hadith collectors, on the authority of Abu Hurairah and Salman ﷺ. Ibn Majah and Ibn Hibban also recorded the like of the hadith on the authority of Abdullah bin Al-Harith bin Jazin ﷺ; so also Abu Dawud on the authority of Abdullah bin Al-Mughaffal ﷺ; so also Ad-Darimi in his Musnad, on the authority of Sahl bin Hunaif ﷺ.

With regards to this issue of facing or not facing the Qiblah when easing oneself, the scholars divide into about eight opinions which we have all brought in Sharh Al-Muntaqa.

Those who do not subscribe to the forbiddance of facing the Qiblah when easing oneself do cite the hadith that has been recorded by all the Six Collectors on the authority of Abdullah bin Umar who said: I climbed the house of Hafsah

one day and saw the Prophet ﷺ easing himself facing Shaam (Greater Syria) and turning his back towards Al-Ka'bah.

Those scholars have the opinion that this hadith has abrogated other narrations that forbid facing the Qiblah when easing oneself.

Among other narrations they use as supportive evidences is the hadith of Jabir ﷺ that can be found with Ahmad, Abu Dawud, At-Tirmidhi – who authenticated it, – Ibn Majah, Al-Bazzar, Ibn Al-Jarud, Ibn Khuzaymah, Ibn Hibban, Al-Hakim and Al-Daraqutni, that he said the Prophet ﷺ forbade that one should urinate while facing the Qiblah, then I saw him a year before his death doing so while facing the Qiblah. At-Tirmidhi indeed reported from Al-Bukhari that the latter saw the narration as being authentic. Ibn As-Sakan also rated authentic; Al-Bazzar said it is hasan.

It is not hidden that it is well stated in the Principles of the Jurisprudence that actions of the Prophet ﷺ cannot stand in opposition to the order he gave to the Ummah. Thus what occurred from him (as regard his facing the Qiblah while urinating) cannot be said to contradict the prohibition he made from facing the Qiblah or turning one's back at it when urinating or defecating.

If you were to say that the hadith of 'A'ishah ﷺ that can be found with Ahmad and Ibn Majah wherein she said, It was mentioned to the Messenger of Allah ﷺ that some people hate that the Qiblah should be faced with their private parts. He said: They did that really? Turn my seat towards the Qiblah.

I say: If the narration above were to be authentic, it would have been held to have abrogated the prohibition because the Prophet ﷺ would have done that to make a law for the Ummah and to oppose those who abhorred facing the Qiblah with their private parts. But the hadith is not authentic; there is Khalid bin Abie As-Salt in its chain. Ibn Hazm said this Khalid was an unknown person. Adh-Dhahabi said in Al-Mizan while discussing the biography of Khalid bin As-Salt: Verily this hadith is Munkar (very weak).

Also those who have the opinion that what is forbidden as regard facing the Qiblah or turning one's back towards it has to do with easing oneself in an open area have made evidence from what Abu Dawud and Al-Hakim recorded from Marwan Al-Asfar. He said: I saw Ibn Umar made his camel to rest in the Qiblah direction and urinated facing it, I said O Abu AbdurRahman (Ibn Umar), is that act not forbidden? He replied: Of course, it was but that has to do with an open area; whenever there is anything between you and the Qiblah which screens you then there is no problem.

Al-Hafidh (Ibn Hajar Al-Asqalani) held the chain of the narration above to be hasan; that comment can be found in Fathu Al-Bari.

This report would have sufficed as a proof, had (Ibn Umar) heard from the Prophet ﷺ what restricts the effect of the forbiddance that was earlier mentioned, but if what he ﷺ relied upon was his understanding from what the Prophet ﷺ did in the house of Hafsah, then such an understanding will not suffice as a proof. With that possibility therefore, the act of Ibn Umar ﷺ will not suffice as a proof.

As for cleaning with three [clean] pieces of stone, what establishes that is what has come in Sahih Muslim and some others on the authority of Salman ﷺ that the Prophet ﷺ forbade using less than three pieces of stone for cleaning, he also forbade using animal dropping or bones for cleaning.

It is also recorded by Ahmad, An-Nasai, Abu Dawud, Ibn Majah, and Al-Daraqutni – who said its chain of narration is hasan – on the authority of 'A'ishah ﷺ that the Messenger of Allah ﷺ said:

إِذَا ذَهَبَ أَحَدُكُمْ إِلَى الْغَائِطِ فَلْيَسْتَطِبْ بِثَلَاثَةِ أَحْجَارٍ فَإِنَّهَا تُجْزِئُ عَنْهُ.

When any of you goes to ease himself, let him clean himself with three pieces of stone, verily those will suffice him.

Abu Dawud also reported the like of the hadith so also An-Nasai on the authority of Abu Hurairah ﷺ.

Ahmad, Abu Dawud, An-Nasai and Ibn Majah also recorded on the authority of Abu Hurairah ﷺ that the Prophet ﷺ used to command of three pieces of stone and would forbade from the use of cattle droppings and old bone.

Ibn Khuzaymah, Ibn Hibban, Ad-Darimi, Abu Awanah – in his Sahih – so also Al-Shafi'i, recorded, on the authority of Abu Hurairah ﷺ, in this wording:

وَلِيَسْتَنْجِ أَحَدُكُمْ بِثَلَاثَةِ أَحْجَارٍ.

Let any of you clean himself with three pieces of stone.

There are some other useful reports under the section other than those we have mentioned.

However, If one cannot get pieces of stone, then what is other than them can stand their place due to necessity so far those things do not fall within what their usage are prohibited, such as cattle droppings, dung and bone; it is neither permissible to use them nor are they sufficient.

As for the legitimacy of saying the words of refuge when one intends the act, that can be got from what the Six Collectors of Hadith recorded on the authority of Anas (bin Malik) ﷺ who said the Prophet ﷺ was such that anytime he intended entering where he would ease himself would say ﷺ:

اللَّهُمَّ إِنِّي أَعُوذُ بِكَ مِن الْخُبُثِ وَالْخَبَائِثِ.

O Allah, I seek refuge in You from male and female demons.

Said bin Mansuur ﷺ also recorded in his Sunan, with the chain of narration meeting the requirements of Muslim, on the authority of Anas bin Malik ﷺ that the Prophet ﷺ used to say:

بِسْمِ اللَّهِ اللَّهُمَّ إِنِّي أَعُوذُ بِكَ مِن الْخُبُثِ وَالْخَبَائِثِ.

In the Name of Allah, O Allah, I seek refuge in You from male and female demons.

As for saying the word of praise and word of forgiveness after finishing the act, what establishes that is what is recorded by Ibn Majah with a good chain on the authority of Anas (bin Malik) ﷺ that whenever the Prophet ﷺ came out of where he eased himself would say:

الْحَمْدُ لِلَّهِ الَّذِي أَذْهَبَ عَنِّي الْأَذَى وعَافَانِي.

Praise be to Allah Who has relieved me of harmful things.

An-Nasai and Ibn As-Sunni recorded the like of the hadith on the authority of

Abu Dharr (ﷺ); As-Suyuti (ﷺ) indicated by abbreviation (in his book) that the hadith is authentic.

Ahmad, Abu Dawud, At-Tirmidhi and Ibn Majah recorded on the authority of 'A'ishah (ﷺ) who said the Prophet (ﷺ) would say anytime he came out of the toilet that:

غُفْرَانَكَ.

Your mercy (O Lord)!.

Ibn Hibban rated the report authentic, so also Ibn Khuzaymah and Al-Hakim,

باب الوُضوء

Chapter 1.5 Ablution

Obligatory Acts of Ablution



It is imperative on everyone who has become responsible for worship to mention Allah's Name (whenever he wants to perform ablution), he should also rinse his mouth, then sniff water into nostrils, wash all his face, then his two hands up to the elbows, then wipe his head including the two ears; it is sufficient to wipe a part of the head, so also it is permissible to wipe the turban. Then he should wash his two legs to the level of the ankles. He is also allowed to wipe the leather socks. His ablution will not be regarded as being according to the Shari'ah except with intention due to the legislation of Salah.

Explanation:

I say: As for the imperativeness of beginning the ablution with mention of Allah's Name, that can be derived from the hadith recorded on the authority of Abu Hurairah – may Allah be pleased with him – that the Prophet ﷺ said:

لَا صَلَاةَ لِمَنْ لَا وُضُوءَ لَهُ وَلَا وُضُوءَ لِمَنْ لَمْ يَذْكُرِ اسْمَ اللَّهِ عَلَيْهِ.

There is no Salah for he who does not have ablution, and there is no ablution for he who does not mention Allah's Name over his ablution.

It is recorded by Ahmad, Abu Dawud, Ibn Majah, At-Tirmidhî in Al-Ilal, Al-Daraqutni, Ibn As-Sakan, Al-Hakim and Al-Baihaqi; there is nobody in the chain of the hadith that could have rendered it inconsiderable.

The hadith has other routes with Ad-Daraqutnî and Al-Baihaqi; all on the authority of Abu Hurairah ﷺ.

Ahmad also recorded the like of the hadith so also Ibn Majah on the authority of Said bin Zaid ﷺ also on the authority of Abu Sa'id (Al-Khudri ﷺ).

Other collectors of hadith recorded the like of the hadith on the authority of 'A'ishah, Sahl bin Said, Abu and Umm Sabirah, Aliyy and Anas ﷺ. There is no doubt that all the routes of the hadith make it to rise to a level in which it can

be cited as a proof. In fact just the first hadith suffices because it is hasan. Then what if other Ahadith – that have come over the issue and that are expressing its meaning – are added to it. There is no need to prolong the matter over bringing the sources of all the Ahadith, what has been said over them are well-known.

What the hadith clearly indicates is the prohibition of commencing ablution without mention of Allah's Name; that gives a condition that if ablution is not carried out with it, it will be regarded as no work done; it is more than just an obligation. That is the least that can be benefitted from the hadith.

As for saying the obligation is for someone who remembers to pronounce it alone, that is derived from a merger of all the Ahadith; and from this hadith:

مَنْ تَوَضَّأَ وَذَكَرَ اسْمَ اللَّهِ عَلَيْهِ كَانَ طُهُورًا لِجَمِيعِ بَدَنِهِ وَمَنْ تَوَضَّأَ وَلَمْ يَذْكُرِ اسْمَ اللَّهِ عَلَيْهِ كَانَ طُهُورًا لأَعْضَاءِ وُضُوْئِهِ.

Whoever performs ablution and mentions Allah's Name over it that will serve as a purification for all his body, but whoever performs it and does not mention Allah's Name over it, that will only serve as a purification for the parts of the utensil he uses for the ablution.

The hadith above was recorded by Al-Daraqutni and Al-Baihaqi on the authority of Ibn Umar ﷺ; the chain of the hadith contains an abandoned person.

They both recorded it also on the authority of Ibn Mas'ud ﷺ with a chain containing a rejected person. So also on the authority of Abu Hurairah ﷺ but its chain contains two weak persons as well.

Neither do all the Ahadith above good as proofs nor do they even contain the desired fact – there is no obligation of mention Allah's Name except upon the person that remembers. But other Ahadith indicate that fact, such as those that state that there is no blame upon what one forgets, as that is also indicated by the Book of Allah the Almighty and Most Sublime.

Thus all the weak Ahadith come under this general ruling and the like of that may not be strictly binding.

Conclusively, there is an ambiguity in saying that the obligation to mention Allah's Name when commencing ablution is for someone who remembers to say it.

As for the obligation of rinsing the mouth and sniffing water into the nostrils,

that can be derived from the fact that both the mouth and the nose are parts of the face whose washing is mentioned by the Noble Qur'an.

The Prophet ﷺ indeed explained what is contained in the Qur'an by his act of ablution that is transmitted to us – rinsing the mouth and sniffing water into the nostrils are part of what is transmitted to us. Thus that indicates that the face which is part of what has been commanded to be washed includes the act of rinsing the mouth and sniffing water into nostrils.

Also there is a command over that as it has been recorded by Al-Daraqutni on the authority of Abu Hurairah رضي الله عنه who said the Messenger of Allah ﷺ commanded the rinsing of the mouth and sniffing of water into the nostrils. It has also been established in the Two Sahihs on the authority of Abu Hurairah رضي الله عنه also that the Prophet ﷺ said:

إِذَا تَوَضَّأَ أَحَدُكُمْ فَلْيَجْعَلْ فِي أَنْفِهِ ماءً ثُمَّ لِيَنْثُرْ.

When any of you performs ablution, let him put water in his nose then he should sniff it out.

It has also been established with the Collectors of the Sunan – among whom At-Tirmidhî, who authenticated it – a hadith on the authority of Laqit bin Sabirah رضي الله عنه which comes in this wording:

وَبَالِغْ فِي الِاسْتِنْشَاقِ إِلَّا أَنْ تَكُونَ صَائِمًا.

Be deep in sniffing water into your nostrils except if you are fasting.'

An-Nasai also recorded on the authority of Salamah bin Qays [that the Messenger of Allah ﷺ told him]:

إِذَا تَوَضَّأْتَ فَانْتَثِرْ.

Whenever you perform ablution, sniff out water.

The hadith was also recorded by At-Tirmidhi.

In another version also on the authority of Laqit bin Sabirah ﷺ, that was earlier mentioned, the Messenger of Allah ﷺ said:

إِذَا تَوَضَّأْتَ فَمَضْمِضْ.

Whenever you perform ablution, rinse your mouth.

Abu Dawud recorded it with a sound chain of narration. At-Tirmidhi held the hadith of Laqit to be authentic so also Al-Nawawi ﷺ and other than them, and he that considered it having hidden defects (that can necessitate being regarded as weak) has not come with sufficient proof.

Some of the scholars are of the opinion that it is obligatory to rinse the mouth and sniff water into the nostrils during ablution; among those are [Al-Imam] Ahmad, Is'haq (Ar-Rahaway), and among Ahlul-Bayt: Al-Qasim, Al-Hadiy, Al-Muayyad bi-llaah. That is also the opinion of Ibn Abi Layla, Hammad bin [Abi] Sulayman.

A number of people of knowledge are of the opinion that sniffing in water is obligatory when performing ritual bath and ablution, as for rinsing the mouth, it is recommended in both; this is the position of Al-Nawawi as he said in Shar'h Muslim from Abu Thawr, Abu Ubayd, Dawud Adh-Dhahiri, Ibn Al-Mundhir, Ahmad in a report from him ﷺ.

Other than Al-Nawawi ﷺ recorded the like of it from Abu Hanifah, Ath-Thawri and Zaid bin Ali, Malik, Al-Shafi'i, Al-Awzai, Al-Layth, Al-Hasan Al-Basri, Az-Zuhri, Rabiah, Yahya bin Said, Qatadah, Al-Hakam bin Utaybah, and Muhammad bin Jarir At-Tabari.

Also from among Ahlul-Bayt: An-Nasir – that both the acts are not obligatory; they cited this proof for position:

Ten things are from the (Sunan) practices of the Messengers.

The hadith is authentic.

Among what are stated as parts of the practices of the Messengers are rising the mouth and sniffing in water.

Some other scholars rejected the above opinion by saying the wording of the

hadith above is not what was mentioned by the Messenger of Allah ﷺ rather what was mentioned was:

Ten things are from the natural instincts.

Even if it is agreed that the wordings came that way, what is intended by 'practice' is 'way of life' which includes what is obligatory not as it has come in the terminology of the People of the Fundamentals.

This is also the response to the hadith of Ibn Abbas رضي الله عنهما they have cited in support of their opinion:

الْمَضْمَضَةُ وَالِاسْتِنْشَاقُ سُنَّةٌ.

Rinsing the mouth and sniffing in water are Sunah.

Al-Daraqutni recorded it but the chain is weak.

As for the obligation of washing the face, there is no difference of opinion over this, in short; there is proof for that in the Book of Allah and the Sunnah of the Messenger of Allah ﷺ.

What is intended by 'face' is as understood generally by the people of the Shari'ah and Language.

As for the obligation of washing the two hands, this is what has come in the Noble Qur'an and the Pure Sunnah also; there is no controversy over that as well. Where there is controversy is whether the elbows are inclusive in what should be washed or not. What however establishes that they should be washed is the hadith of Jâbir found with Al-Daraqutni and Al-Baihaqi that the Prophet ﷺ made water to roll over his elbows (when performing ablution) then he ﷺ said:

This ablution will not be accepted except with that.

There is Al-Qasim bin Muhammad bin Abdullah bin Muhammad bin Aqil in the chain of the hadith, and he is weak.

Also in Sahih Muslim, that Abu Hurairah رضي الله عنه washed his two hands until he reached the shoulders then he said:

This is how I saw the Messenger of Allah ﷺ perform ablution.

In a version found with Al-Daraqutni, Uthman ﷺ washed his face and the two hands until he washed the upper parts of his shoulders.

Al-Bazzar and At-Tabarani recorded on the authority of Thalabah bin Ubbad ﷺ from his father, who reported from the Messenger of Allah ﷺ that he ﷺ washed his forearms until the water got over his elbows. This thus explains what is in the Qur'an, which therefore indicates that ' the elbows' are inclusive in the washing mentioned of the hand.

As for the obligation of wiping the head, generally speaking, there is no controversy over that; where lies controversy is whether the whole of the head is to be wiped or only a part of it. As for what has come in the Great Book (the Qur'an), there is a controversy as to whether it indicates that all the head should be wiped or part of it. The authentic Sunnah has however come with the explanation. We have in the Sunnah what indicates the permissibility of wiping part of the head is some circumstances, as it has come in Sahih Muslim and other books of hadith on the authority of Al-Mughirah, that the Messenger of Allah ﷺ once performed an ablution in which he wiped his forehead together with turban.

Abu Dawud recorded on the authority of Anas that the Messenger of Allah ﷺ put his hands under his turban then he wiped his forehead and he did not remove the turban.

It is not hidden that Allah's Words:

وَامْسَحُوا بِرُءُوسِكُمْ

Rub your heads (by passing wet hands over them during ablution).

That the Words of Allah above do not indicate that all the head should be wiped, as it usually occurs in the usage of the verbs like this.

For instance: It can be said I hit Zaid's head, I hit his head, I beat Zaid, and I beat Zaid's hand; all these constructions have the lexical meaning of the parts not the whole. The case of this Verse is as such. However, the controversy is not as to what is referred to as 'head' linguistically that it will be said that it is its actual self in whole, rather the controversy is as to the wiping occurring over it.

Even if it is said that the whole of the head is what is referred to, the Prophet ﷺ has explained its restriction by sometimes wiping the whole and sometimes wiping only a part, unlike the face which must be washed in all circumstance.

As for the hands and legs, their wiping and washing has been well established. If it is said that wiping here is not as you exemplified earlier on, I will reply by saying that none disputes among the People of language that the usage will be the same. For instance: It can be said 'I wiped the cloth' or 'I wiped over the cloth;' or 'I wiped the wall' or 'I wiped over the wall' to indicate a part of the cloth or the wall that has been wiped; rejecting this kind of meaning may portray arrogance.

As for the issue of rubbing the two ears (with water) alongside the head, what has been established in various authentic reports is that the Messenger of ﷺ rubbed them alongside the head.

It has come authentically from him that he ﷺ says:

اللأُذُنَانِ مِنَ الرَأْسِ.

The ears are part of the head.

The hadith has come in various routes that lend support to one another.

As for wiping over the turban or any other thing that can be wore on the head, that has been established from the Messenger of Allah ﷺ in the hadith of Amr bin Umayyah Ad-Damri ﷺ, as recorded by Al-Bukhari and some other collectors of hadith. Also the hadith of Bilal ﷺ as recorded by Muslim and some other collectors of hadith; also from the hadith of Al-Mughirah ﷺ with At-Tirmidhi which he rated authentic. But there is nothing as wiping the forelock in his hadith; rather the wording is as follows:

He wiped over the two leather socks and the turban.

There are other reports under the section such as the one from Salman (Al-Farisi) ﷺ with Ahmad, also the one on the authority of Thawban ﷺ with Abu Dawud and Ahmad.

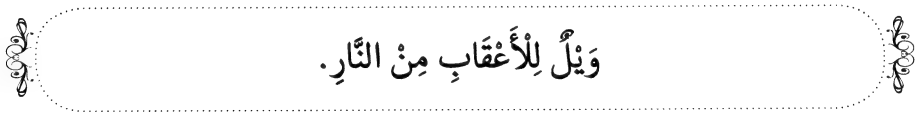
In summary, it has been established that the head can be wiped alone so also the turban alone, and both of them together; each act is correct and authentic.

It has come in the hadith of Thawban ﷺ what indicates the permissibility of wiping over the turban when there is reason for it; the hadith can be found with Ahmad and Abu Dawud; it reads that the Messenger of Allah ﷺ sent a detachment. They encountered cold on their way, they then got back to the Prophet ﷺ and complained to him of what they encountered of cold, he ﷺ then commanded them to wipe over the turbans and the leather socks.

However there is Rashid bin Sa'd in the chain of the hadith mentioned above; Al-Khalal said in his Ilal (a book on hidden defects in hadith): Ahmad said it is not appropriate that Rashid heard from Thawban because the latter had died long.

As for the obligation of washing the legs and the ankles, that is indicated by what has been established from the Messenger of Allah ﷺ in all the Ahadith that have come over his manner of performing ablution; all the reports indicate clearly that the legs are to be washed (up to the ankles). There is no report that says that he only wiped over them except a report that holds no water.

The obligation of washing the legs can be corroborated by the statement of the Messenger of Allah ﷺ to those whom he saw wiping over their legs (on a journey they had together):



Woe to the heels in the Fire.

The hadith has come in the Sahihayn and others.

What further corroborates the obligation of washing the legs is the command that came from him also ﷺ that the legs should be washed; as it has come on the authority of Jabir bin Abdullah ﷺ as recorded by Al-Daraqutni.

So also is this statement of Messenger of Allah ﷺ:



This ablution; Allah will not accept a Salah except with it.

In the ablution wherein the Prophet ﷺ made the above statement, he washed his two legs.

So also was the statement of Messenger of Allah ﷺ to the Bedouin:

تَوَضَّأْ كَمَا أَمَرَكَ اللهُ.

Perform ablution as Allah has commanded you.

After that the Prophet ﷺ mentioned to him the manner of performing ablution; and there was the action of washing the two legs in it.

All these authentic Ahadith are well-known and they all indicate that reciting the Verse of Surah Maidah arjulakum as arjulikum is abrogated or that it is understood to mean proximity (of mentioning the two acts).

The opinion above is the opinion of the majority of the scholars; Al-Imam Al-Nawawi said: 'The opposite of this has not been established from anybody that can break the registered Consensus.'

Al-Hafidh ﷺ said in Fathul-Bari: 'The opposite of that was not established from any of the Companions except Ali, Ibn Abbas and Anas; but they later returned from that opinion.

Said bin Mansuur Al-Hafidh ﷺ said in Fathul-Bari: 'The opposite of that was not established from any of the Companions except Ali, Ibn Abbas and Anas; but they later returned from that opinion' related from AbdurRahman bin Abi Layla who said: 'The Companions of the Messenger of Allah ﷺ unanimously agreed that the two heels (the two legs) should be washed.'

The Imamiyyah Sect said it is compulsory to wipe the two legs (not washing).

Muhammad bin Jarir, Al-Hasan Al-Basri and Al-Jubbai said that one can choose between washing and wiping.

Some people who subscribe to the Zhahiriyyah Enclave (the Literalists) say it is compulsory to merge washing and wiping.

Those who say it is compulsory to wipe the legs cite no proof for their position except with their reliance on reciting the Verse of Surah Maidah with Kasrah vowel sound, (that is, arjulikum); this however does not indicate that wiping is specifically stated because the other manner of reciting the Verse is established without doubt. Also, the import of reciting the Verse as a'rujulikum is that one can make a choice between washing and wiping had the Messenger of Allah ﷺ not stipulated that only washing is permissible.

As for the obligation of washing the ankles alongside the legs; the issue is like the issue of washing the elbows alongside the hands. It was not established from the Prophet ﷺ that he washed the ankles alongside the legs as the washing

of the elbows alongside the hands was established from him. However, if we conclude that the obligation of washing the legs cannot be established except when the ankles are washed alongside it that will suffice from looking for other evidences.

As for the fact that a person performing ablution can wipe his leather socks, that is indicated by what has come in various routes from the Messenger of Allah ﷺ in both his act and statement.

Imam Ahmad رحمه الله said: 'There are forty hadith (over the issue).'

Also, other than Imam Ahmad said a similar thing.

Ibn Abi Hatim رحمه الله said: 'About forty-one men among the Companions reported it from the Messenger of Allah ﷺ.

Ibn Abdil-Barr Ibn Abdil-Barr رحمه الله said: 'Forty men (reported it).' said: 'Forty men (reported it).'

Ibn Mandah Ibn Abdil-Barr رحمه الله said: 'Forty men (reported it).' said: 'Those who reported it from the Messenger of Allah ﷺ among the Companions were about eighty men.'

Ibn Al-Mundhir رحمه الله related on the authority of [Abdullah] Ibn Al-Mubarak رحمه الله that the he said: 'There is no controversy between the Companions over wiping the leather socks because all those who were said to have frowned at it were equally reported to have said it was established.'

Imam Ahmad mentioned that Abu Hurairah's رضي الله عنه hadith that rejects wiping over the leather socks is a falsehood; so also is what was reported from 'A'ishah and Ibn Abbas رضي الله عنهما.

Some scholars of hadith have also bemoaned the report, and the opposite of that was equally reported from them. So also was what was reported from (Ali Ibn Abi Talib) that he said: 'The Book predates [wiping over] the leather socks;' there is a breakage in its chain.

Muslim and An-Nasai recorded on the authority of Ali رضي الله عنه that he said leather socks were been wiped over (by the Companions) after the death of the Messenger of Allah ﷺ.

Al-Imam Al-Mahdi رحمه الله related in Al-Bahr from Ali رضي الله عنه that he spoke in favour of wiping over the leather socks.

It has also been established in the Sahihayn on the authority of Jarir رضي الله عنه that Ali رضي الله عنه once wiped over the leather socks. Jarir's acceptance of Islâm was after the revelation of the Verse in Surah Maidah because the Verse was revealed in the Battle of Al-Muraysi.

Al-Mughirah (ﷺ) also reported wiping over the leather socks from the Prophet (ﷺ); that he did so in the Battle of Tabuuk, and it is agreed upon that the Tabuuk came after the Battle of Al-Muraysi.

Al-Bazzar mentioned that this hadith of Al-Mughirah (above) was reported by about sixty men.

In summary therefore, that wiping over the leather socks is a legislated act (in Islam) is more apparent than there should be a lengthy talk over it. But because there is a long-time controversy over it such that there has been much debates wherein, people got busied with it to the extent that some People of Knowledge made the matter one of the cardinals of the Islamic Creed.

The timing for wiping over the leather socks has been put at three days for a traveller and a day and night for a resident.

As for the fact that ablution would have to be upon an intention before it can be regarded under the law (of Islam), that is indicated by this hadith:

إِنَّمَا الأَعْمَالُ بِالنِّيَّاتِ.

Actions are based upon intentions.

The hadith is in the Sahihayn and others; it has come in various routes with different wordings. If what has been implied as the predicate is general for acts of worship, then it means that a legislated act cannot be accepted except with it (intention). But if the implied predicate is specific, then the closest thing it can mean is that the act is correct without it. That is what it should mean.

Al-Haafidh Ibn Hajr (ﷺ) said in Fath al-Bari: 'Scholars have agreed on the fact that intention is a condition for the validity of the goals; but they differ as to the means it (the goals), there the Hanafis go on a different view and say that the intention is not a condition for acceptance of ablution.'

The author of Al-Bahr attributes the view that intention is a must (in ablution) to Ali and other members of the Family of the Prophet (ﷺ); he also attributed the view to Al-Shafi'i, Malik, Al-Layth, Rabiah, Ahmad bin Hanbal and Ishaq bin Rahawahy (ﷺ).

باب مُستَحبّات الوُضوء

Chapter 1.6 Recommended Acts of Ablution



Impurities include human defecation in the absolute sense, his urine except a breastfeeding boy, dog's saliva, animal droppings, menstrual blood, flesh of swine; any other things beside those are not agreed upon – what can be said about them is that they are to be basically regarded as pure; nothing can make them to cease to be pure except an authentic factor not contradicted with what has an equal footing with or supersedes it.

It is recommended that the washing is repeated three times except the head, the washing of the legs and the face be extended, the using Siwak should precede the start of ablution, the washing of the palms up to the wrists three times should be done before the other earlier mentioned limbs are washed.

Explanation:

As for the recommendation of using the Siwak, that can be deduced from the Ahadith that have variously come in both the statements and deeds of the Messenger of Allah ﷺ; there is no controversy about that.

As for extending the washing of the legs and the face, it is by the virtue of the authentic reports that have come over it.

As for washing the palms up to the wrists before starting the ablution, hadith of Aws bin Aws Ath-Thaqafi رضي الله عنه illustrates that; he said: 'I saw the Messenger of Allah ﷺ perform ablution and he took three handfuls of water to wash his palms. Ahmad recorded the hadith and also An-Nasai.

It has been established in the Sahihayn on the authority of Uthman رضي الله عنه that he poured water over his palms three times washing them. The like of the report has also been established on the authority of a number of Companions of the Messenger of Allah ﷺ; they all reported it from the Messenger of Allah ﷺ.

As for the recommendation of doing each of the washing three times, that is due to what has come authentically in some Ahadith that the Messenger of Allah ﷺ washed each of the limbs three times and he explained that what was obligatory is washing it one time.

As for the impermissibility of washing the head three times, it is because the clear Ahadith that have come stating that the rest of the limbs should be washed

three times also stated that the head should be washed one time, and the hadith that has come with washing the head three times is not sufficient as a proof.

باب نَواقِض الوضُوء

Chapter 1.7 Nullifiers of Ablution



Ablution will get nullified by whatever comes out of the two private parts (the anus, and the male or female private organ); whatever comes out of those two places such as definite dirt, or odour, nullifies ablution. So also by what may obligate performing a ritual bath, a sleep observed while reclining, eating camel meat, vomiting and what is similar, and the act of touching the penis.

Explanation:

As for the ablution getting nullified by whatever comes out of the two private parts, reports have indicated that. An example of that is the hadith reported on the authority of Abu Hurairah ﴿ﷺ﴾ found in the Sahihayn and other books of hadith wherein he said the Messenger of Allah ﴿ﷺ﴾ said:

لَا يَقْبَلُ اللَّهُ صَلَاةَ أَحَدِكُمْ إِذَا أَحْدَثَ حَتَّى يَتَوَضَّأَ.

Allah will not grant the Salah of any of you when he is not clean until he performs ablution.

Abu Hurairah ﴿ﷺ﴾ explained this hadith when a man asked to him: 'What is it that causes one to be unclean?' He ﴿ﷺ﴾ replied: 'Fart or breaking the wind.'

The meaning of the hadith is more encompassing than the way Abu Hurairah Abu Hurairah ﴿ﷺ﴾ explained this hadith when a man asked to him: 'What is it that causes one to be unclean?' He ﴿ﷺ﴾ replied: 'Fart or breaking the wind.' Explained rather he placed what is lighter over what is heavier and there is no controversy as to that vitiating the ablution. Also, there is no controversy over the ablution being vitiated by what could obligate a ritual bath during copulation.

As for the assertion that ablution can be nullified by a sleep observed while reclining, that is indicated by the Ahadith that have come over sleep vitiating the ablution, like this hadith:

مَنْ نَامَ فَلْيَتَوَضَّأْ.

Whoever sleeps should perform ablution (again).

But the meaning of the hadith above is restricted by the fact that the intended sleep that can nullify ablution is the one observed reclining; that has been reported via various routes. The criticism over the authenticity of the hadith is washed down by the fact that it has come via various routes. It is in this vein that there could be a merger of several proofs (over the issue), and there are about eight views on the matter which I have discussed in my book Sharh Al-Muntaqa, wherein I mentioned different Ahadith over the issue with their sources after which I indicated what view is superior.

As for the nullification of the ablution by eating the meat of camel, that is indicated by the statement of the Messenger of Allah ﷺ when it was said to him (by one of the Companions): 'Do I perform ablution after eating camel meat?' He replied in the affirmative. The report can be found in the Sahih on the authority of Jabir bin Samurah ﷺ. It is also reported from other than this route.

Many of the scholars are of the opinion that camel meat does not nullify ablution, they cite the reports that purportedly abrogate the reports that say it nullifies ablution. Meanwhile it should be noted that none of those hadith (that purportedly abrogate the order of ablution) clearly mention meat of camel. So the order could not be regarded as being abrogated.

Al-Imam Ahmad is of the opinion that camel meat nullifies ablution so also is Ishaq bin Rahawahy, Yahya bin Yahya, Ibn Al-Mundhir, Ibn Khuzaymah, and Al-Baihaqi. A similar opinion was reported of the People of Hadith and of a number of Companions of the Messenger of Allah ﷺ. Al-Nawawi ﷺ: Al-Baihaqî mentioned that it was reported from some of our comrades from Al-Shafi'i – may ﷺ that he said: 'If the hadith on camel meat is authentic, then that is my opinion.' Al-Baihaqi said: Two hadiths are authentic as regard it: Hadith of Jabir bin Samurah and hadith of (Al-Bara Ibn Hazib) ﷺ.

As for the issue of vomit nullifying the ablution, that is indicated by the hadith that was reported from the Messenger of Allah ﷺ that he vomited and he later performed ablution; it was reported by Ahmad and the Collectors of Sunan. At-Tirmidhi said: 'It is the most preferred report in the section.' Ibn Mandah ﷺ authenticated it. That is undoubtedly sufficient as a proof. Some other Ahadith even lend support to it such as the hadith reported on the authority of 'A'ishah ﷺ from the Messenger of Allah ﷺ that he said:

مَنْ أَصَابَهُ قَيْءٌ أَوْ رُعَافٌ أَوْ قَلَسٌ أَوْ مَذْيٌ فَلْيَنْصَرِفْ فَلْيَتَوَضَّأْ.

Whoever is affected by vomit or nosebleed or throat discharge or pre-seminal fluid should turn away (from Salah) and perform ablution.

There is Ismail bin Ayash in its chain; there is an ill-statement against him.

Also on the matter, there are reports from a number of Companions of the Messenger of Allah ﷺ which constitute a consensus which is sufficient as a proof. The members of the Family of the Prophet ﷺ are also of that opinion so also Abu Hanifah and his comrades.

But Al-Shafi'i and his comrades, so also An-Nasir, As-Sadiq and Al-Baqir are of the view that vomit cannot vitiate ablution. They interpreted the ablution mentioned in the Ahadith that indicate performing ablution after vomit as washing of the hands. But it is not hidden that what is clearly legislated takes precedence. And what is meant by the like of vomit is Al-Qals (throat discharge) and nosebleed. The controversy over stomach discharge is like that of vomit.

Al-Khalil said: Al-Qals is whatever comes from the throat and fills the mouth or less than that; and that is not Al-Qay (vomit).

The author of An-Nihayah (Ibn Al-Athir) wrote: 'Al-Qals is whatever comes from the chest.' He then mentioned the like of what Al-Khalil said.

As for Ar-Ruaf (nosebleed), the following eminent scholars are of the opinion that it vitiates the ablution: Abu Hanifah, Abu Yusuf, Muhammad, Al-Qasimiyyah Sect, Ahmad bin Hanbal and Ishaq. But they all put a condition that blood must flow.

Ibn Abbas, An-Nasir, Malik, Al-Shafi'i, also a report from Ibn Abi Awfa, and Abu Hurairah, Jabir bin Zaid, Ibn Al-Musayyib, Makhul and Rabiah; all those are of the opinion that nosebleed does not vitiate ablution. They answered the evidence of those who say vitiates ablution by pointing to the defect it contains, as well as its contradiction to the like of this hadith whereby the Prophet ﷺ once cupped and observed Salah without performing ablution; he did not do more than washing the spots where he had been cupped. Al-Daraqutni reported the hadith; there is Salih bin Muqâtil in its chain; he is weak.

Their argument that the hadith of those who say it nullifies is defective can be answered by saying that the hadith could become stronger due to its various routes. As for the alleged contradiction, it could be said that the latter was not suitable as a proof, and that blood of nosebleed is unlike the blood from

cupping. It is therefore not far to say that its coming from the deep veins would have an effect of vitiating the ablution.

As for the assertion that ablution gets vitiated because of touching the penis, the hadith of Busrah bint Safwan ﵂ that the Prophet ﷺ said:

مَنْ مَسَّ ذَكَرَهُ فَلَا يُصَلِّي حَتَّى يَتَوَضَّأَ.

Whoever touches his penis should not observe Salah until he performs ablution.

The above was recorded by Ahmad, the Collectors of Sunan, Malik, Al-Shafi'i, Ibn Khuzaymah, Ibn Hibban, Al-Hakim, Ibn Al-Jarud; the hadith was rated authentic by Ahmad, At-Tirmidhi, Al-Daraqutni, Yahya bin Main, Al-Baihaqi, Al-Hazimi, Ibn Hibban, Ibn Khuzaymah, Al-Bukhari said: "It is the most authentic report on the topic".

There are several other Ahadith from a number of Companions of the Messenger of Allah ﷺ the like of: Jabir, Abu Hurairah, Umm Habibah, Abdullah ibn Amr, Zaid bin Khalid, Sa'd ibn Abi Waqqas, 'A'ishah, Ibn Abbas, Ibn Umar, An-Numan bin Bashir, Anas, Ubay bin Kab, Muawiyah bin Haidah, Qabisah and Arwa bint Unays.

Hadith of Busrah alone is clearer than hadith of Talq bin Ali, recorded by the Collectors of Sunan linked to the Messenger of Allah ﷺ with the wordings: 'If a man touches his penis, will he have to perform ablution?' Then the Messenger of Allah ﷺ said:

لا إِنَّمَا هُوَ بُضْعَةٌ مِنْكَ.

It is but a part of your body.

If that, what if several other Ahadith (on the topic) are added to Busrah's hadith as we have earlier indicated?

Whoever tends towards the saying that hadith of Talq is clearer has not come with a sufficient proof.

A number of Companions of the Messenger of Allah ﷺ were of the opinion that whoever touches his penis will have his ablution vitiated, so also some of

the Followers, some other eminent scholars and leaders of the Ummah. [They all tend towards working with the hadith of Busrah because of the fact that she accepted Islam late]. Some other scholars have taken the other opinion. The truth however is that it vitiates the ablution.

There has been another report that indicates that touching the private part vitiates ablution. This report discusses elaborately the 'front and back private parts' as they relate to vitiating ablution, it is recorded by Ibn Majah on the authority of Umm Habibah ﴿رضي الله عنها﴾ who said: I heard the Messenger of Allah ﴿ﷺ﴾ say:

مَنْ مَسَّ فَرْجَهُ فَلْيَتَوَضَّأْ.

Whoever touches his private part should perform ablution.

Ahmad rendered the above report as being authentic, so also Abu Zurah; Ibn As-Sakan said: 'I am not aware that it has any defect.'

Al-Daraqutni recorded on the authority of 'A'ishah – on the authority of the Messenger of Allah ﴿ﷺ﴾ that he said:

إِذَا مَسَّتْ إِحْدَاكُنَّ فَرْجَهَا فَلْتَتَوَضَّأْ

Whenever any of you females touches her genital let her perform ablution for Salah.

There is AbdurRahman bin Abdullâh Al-Umari in the chain; there is an ill-statement about him.

Ahmad, At-Tirmidhi and Al-Baihaqi recorded on the authority of Amr bin Shuayb from his father then from his grandfather ﴿رضي الله عنه﴾ then from the Prophet ﴿ﷺ﴾ who said:

أَيُّمَا رَجُلٍ مَسَّ فَرْجَهُ فَلْيَتَوَضَأْ وَأَيُّمَا امْرَأَةٍ مَسَّتْ فَرْجَهَا فَلْتَتَوَضَأْ.

Any man who touches his genital should perform ablution so also any woman who touches her genital.

There is Baqiyyah Ibn Al-Walid (a mudallis) in the chain; however he was explicit in saying he heard the narration.

باب متى يجب الغُسل

Chapter 1.8 Ghusl

Ritual Bath



It is mandatory to perform the ghusl when sperm comes out due to sexual enjoyment, even if that has arisen from ordinary thought. So also when the two circumcised parts meet, so also after a woman completes her menstrual period or post-natal period, so also when ones dreams and sees seminal stains (on waking up), so also is washing the dead and when a person accepts Islam.

Explanation:

As for the obligation of performing ghusl because of sperm that comes out of one due to sexual enjoyment, several authentic reports indicate that such as the hadith below reported by An Nasai:



Bath taking becomes compulsory when seminal fluid comes out of one.

So also is this hadith by At-Tirmidhi:



There is bath as a result of (ejaculation of) semen.

The name Janaba applies to everything that falls within that category; Allah has indeed said:

وَإِنْ كُنْتُمْ جُنُبًا فَاطَّهَّرُوا

...if you are in a state of Janaba (i.e. had a sexual discharge), purify yourself (bathe your whole body)... [Al-Maidah: 6]

I know of no controversy over the fact that a mere expulsion of semen from the body could be called Janaba.

The popular controversy among the Companions and those after them had only been with respect to whether or not it is obligatory to perform ghusl when the male and female circumcised parts meet without ejaculation. What is correct is the first statement that it is compulsory to perform ghusl even if there is no ejaculation of semen, that is due to the hadith recorded by Al-Bukhari and Muslim on the authority of Abu Hurairah ﷺ that goes thus:

إِذَا جَلَسَ بَيْنَ شُعَبِهَا الْأَرْبَعِ ثُمَّ جَهَدَهَا فَقَدْ وَجَبَ عَلَيه الْغُسْلُ.

When he sits between her four parts then enters into her, the ghusl has become imperative.

Muslim, Ahmad and At-Tirmidhi recorded a similar report on the authority of 'A'ishah ﷺ; At-Tirmidhi said the report is authentic.

The two hadith – and all other reports upon their meaning – have abrogated what was the earlier practice, that ghusl was only imperative when there was an ejaculation. The hadith of Ubayy bin Kab ﷺ indicates that; he said: the verdict they relied upon 'birth is compulsory only when there is seminal discharge' was a concession; the Messenger of Allah ﷺ granted it in the early period of Islam then he commanded us to perform ghusl after that.

Muslim also recorded on the authority of 'A'ishah ﷺ that a man asked the Messenger of Allah ﷺ about another man who had a sexual intercourse with his wife and he did not ejaculate – 'A'ishah was sitting all through; then the Messenger of Allah ﷺ said:

إِنِّي لَأَفْعَلُ ذَلِكَ أَنَا وَهَذِهِ ثُمَّ نَغْتَسِلُ.

I and this (referring to 'A'ishah) used to do that and we would later perform ghusl.

As for the obligation of ghusl after the menstrual period, there is no difference of opinion over that; that is what the Qur'an and various reports from the Messenger of Allah ﷺ point to. There is also a consensus over the obligation of ghusl with regard to post-natal blood, so also there is a consensus with regard to dreams except what has been reported of An-Nakhai. However, the ghusl will be obligatory in case of dreams when there is seminal stains, as it has come in the hadith recorded on the authority of 'A'ishah ﷺ wherein she said that the Messenger of Allah was asked in respect of a man who saw a seminal stain (upon waking up from sleep) but could not remember whether he had a wet dream or not. The Prophet ﷺ replied: 'the man had to perform ghusl'. So also about a man who discovered that he had a wet dream but could not see a seminal stain, the Prophet ﷺ said: he needs not to perform ghusl'. It is recorded by Ahmad, Abu Dawud, At-Tirmidhi, and Ibn Majah. The men in the chain are men of authentic report except Abdullah bin Umar Al-Umari whom there was a minor comment against.

Ahmad and An-Nasai recorded the like of the hadith on the authority of Khawlah bint Hakim ﷺ. Al-Bukhari and Muslim among other collectors of hadith recorded another hadith on the authority of Umm Salamah ﷺ that Umm Sulaym ﷺ said: O Messenger of Allah ﷺ, verily Allah is not shy from the truth; will a woman perform ghusl when she has a wet dream? He replied in the affirmative and added:

نَعَم إِذَا رَأَت الْمَاءَ.

Yes if she sees seminal fluid.

All these reports reject the claim that before a wet dream can be regarded as necessitating ghusl, the person must have a sexual enjoyment and must be certain of that.

As for the obligation of ghusl at death, what this means is that it is obligatory on the living to perform ghusl for the dead. Otherwise, there is no responsibility

connected to the body of a dead person after his death. Rather what it implies is that it is obligatory upon the living as regard a dead person.

Al-Mahdi brought in his Al-Bahr, so also Al-Nawawi, the consensus that it is obligatory to wash a dead person. Some later scholars [such as Al-Jalal] argued this opinion, but argument was very weak.

We shall discuss washing the dead in details; the manner of doing so, and its intricacies, Insha Allah.

As for the obligation of performing ghusl upon embracing Islam, that is taking from the hadith recorded by Ahmad, Tirmidhi, Nasai, Abu Dawud, Ibn Hibban, and Ibn Khuzaymah on the authority of Qays bin 'Aasim ﴿ﷺ﴾ that when he embraced Islam the Messenger of Allah ﴿ﷺ﴾ commanded him to perform a bath with water and sidr (lotus leaves). Ibn As-Sakan saw the hadith as authentic.

Ahmad, Abdul Razzaq, Al-Baihaqi, Ibn Khuzaymah, and Ibn Hibban also recorded on the authority of Abu Hurairah ﴿ﷺ﴾ that Thumamah ﴿ﷺ﴾ accepted Islam then the Prophet ﴿ﷺ﴾ said:

اذْهَبُوا بِهِ إِلَى حَائِطِ بَنِي فُلَانٍ فَمُرُوهُ أَنْ يَغْتَسِلَ.

Go with him to the wall of so-and-so clan, and then command him to take a bath.

The basis of the hadith can be found in the Sahihayn though they do not contain the command that he should take a bath, what is there is that he took a bath (on his own volition).

Ahmad bin Hanbal and his followers are of the opinion that it is obligatory to perform a bath upon embracing Islam. This is the view of Al-Hadiyy and his followers too.

Al-Shafi'i ﴿ﷺ﴾ was of the opinion that such a bath is not obligatory. That is equally the opinion of Al-Mansuur bi-Llah.

The first opinion is however the truth. That view can be aided with what occurred from him ﴿ﷺ﴾ as to his command to Waathilah bin Al-Asqa ﴿ﷺ﴾ that he should perform a bath; so also his command ﴿ﷺ﴾ to Qatadah Ar-Ruhaawiyy ﴿ﷺ﴾ as was recorded by At-Tabarani. So also was his command ﴿ﷺ﴾ to Uqayl bin Abi Talib ﴿ﷺ﴾, as was recorded by Al-Hakim in Taarikh Naysabuur. But there is a little problem with the chain.

باب الغُسل وسننه

Chapter 1.9 Ghusl and its Essentials



The Obligatory Ghusl is performed by pouring water over the whole body, or dipping oneself in water; it is necessary in both cases for one to rinse his mouth and sniff water into his nostrils. So also it includes the act of rubbing with water whatever is possible of the body. This bath will not be valid except it is accompanied with an intention in order to take care of whatever might have necessitated the birth. It is recommended that parts that are washed during ablution are first washed except the two legs. It is also recommended that the right limbs are first washed.

Explanation:

Ghusl is lexically and legally what has been mentioned (in the foregoing). There is a difference of opinion as to whether or not rubbing the body falls within what is called a ghusl. But it is not hidden that the mere act of wetting the cloth or the body without rubbing is not called washing as understood in the Arabic usage, and as indicated by what was earlier said as regard the urine of a breastfeeding boy whereby the Prophet ﷺ only followed the spot with water; he never washed it. The hadith is in Sahih Muslim and other books of hadith.

As for the acts of rinsing the mouth and sniffing water into the nostrils; the two acts have been established as being part of ghusl as indicated in the act of the Messenger of Allah ﷺ. The obligation of the acts has been from the perspective of what we earlier said as regard ablution.

As for the assertion that a bath will not be valid except with an intention; this is also in the perspective of what we earlier said regarding ablution.

As for the recommendation of washing first the parts that are washed during ablution except the two legs, it has come authentically in the Two Sahih and some others that the Prophet ﷺ was such that anytime he performed ghusl from Janaba, he would start with his two hands, then would use his right hand to pour water over his left, then would wash his private part, then would perform the like of his ablution for Salah, then would pour water over the rest of his body, and then would wash his two legs. This is what is contained in the hadith reported by 'A'ishah رضي الله عنها.

There is also in the Sahihayn and some others on the authority of Maymunah رضي الله عنها this wording: The Prophet ﷺ poured water over his two hands and washed them two or three times, then used his right hand to pour water over

his left, then washed his private part. After which he rubbed his hands over the floor, then rinsed his mouth and sniffed water into his nostrils, then washed his face and two hands, then washed his head three times after which he poured water over his body. Then he left the spot he was and washed his two legs.

It was also established from him ﷺ that he would not perform ablution after performing ghusl, as was recorded by Ahmad and the Collectors of Sunan. At-Tirmidhi said: 'The hadith is hasan sahih.' Al-Baihaqi also recorded it with good chains.

Ibn Abi Shaybah ﷺ recorded on the authority of Ibn Umar ﷺ, linking it to the Prophet ﷺ, and at a time not linking it to him ﷺ; that he said when he was asked as regard performing ablution after ghusl:

وَأَيُّ وُضُوءٍ أَعَمُّ مِنَ الْغُسْلِ؟

And which ablution will be more encompassing than a bath?

It was also reported from Hudhayfah ﷺ that he said: Is it not sufficient for any of you that he should take a bath from his head down to his legs than performing ablution?

A report similar to that was reported from a number of Companions of the Messenger of Allah ﷺ, also from a number of those who came after them such that Abu Bakr bin Al-Arabiyy said: 'Scholars have no disagreement over the fact that ablution is inclusive in the ghusl, and that the intention one had for purification from Janaba supersedes the intention one had for purification from filth.

Ibn Battal ﷺ claimed there is a consensus over this issue, however, it can be refuted by the fact that a number of scholars had the opinion that ghusl does not suffice for ablution; those include Abu Thawr and Dawud (the literalist); it was also the opinion of the majority of the members of the Prophet's Household.

As for the assertion that it is not obligatory to wash parts that are washed during ablution first, this is because the ghusl is justified without washing them first; it can even be achieved by only pouring water over the whole body.

As for starting with the right limbs, that is due to what has authentically come from the Messenger of Allah ﷺ in his statement and act, generally and specifically.

Among the general proofs is what has come in the Sahih that he used to marvel

at starting with the right in his manners of putting on footwear, combing the hair, purification and in all his other affairs.

Among the specific proofs is what has been established in the Sahihayn and other books of hadith that he began with the right half-part of his head then his left when he was performing ghusl. What gives weight to that has been established in his statement as well. There is no disagreement over the recommendation of starting from the right.

باب متى يسنّ الغسل

Chapter 1.10 When Ghusl is Recommended



Ghusl is legislated for Jumu'ah Prayer, the Two Eids, whoever washes a dead person, upon assumption of Ihram (for hajj) and when entering Makkah.

Explanation:

As for its legality for Jumu'ah Prayer, this hadith illustrates that:

إِذَا جَاءَ أَحَدُكُمُ الْجُمُعَةَ فَلْيَغْتَسِلْ.

The hadith is in Sahihayn and others; on the authority of Ibn Umar ﷺ. The scholars of the Ummah have accepted the hadith (as expressing the truth). About three hundred persons narrated it from Nafi (who narrated it from Ibn Umar). There were other Companions of the Messenger of Allah ﷺ who reported it beside Ibn Umar ﷺ about twenty-four of them. A number of scholars were of the opinion that it is obligatory to perform a bath for Jumu'ah Prayer.

Al-Nawawi ﷺ said: 'The obligation of the bath was reported from a group of the Salaf; as was reported from a number of Companions of the Messenger of Allah ﷺ.' That was also the opinion of the literalists. Ibn Al-Mundhir ﷺ recorded that from Abu Hurairah ﷺ, Ammar and Malik. Al-Khattabi ﷺ reported that view from Al-Hasan Al-Basri ﷺ. Ibn Hazm ﷺ said a group of Companions of the Messenger of Allah ﷺ and those who came after them were of that opinion.

However the majority of the scholars are of the view that the bath is recommended; they cite as a proof the hadith reported on the authority of Abu Hurairah, as found with Muslim (in his Sahih):

مَنْ تَوَضَّأَ فَأَحْسَنَ الْوُضُوءَ ثُمَّ أَتَى الْجُمُعَةَ فَاسْتَمَعَ وَأَنْصَتَ غُفِرَ لَهُ مَا بَيْنَ الجُمُعة إلى الْجُمُعَةِ وَزِيَادَةُ ثَلَاثَةِ أَيَّامٍ.

Whoever performs ablution and does it well then goes to Jumu'ah and listens by remaining silent, he will be forgiven (the sins) between that Jumu'ah and another with three additional days.

So also is the hadith of Samurah ﷺ that the Prophet ﷺ said:

مَنْ تَوَضَّأَ لِلْجُمُعَةِ فَبِهَا وَنِعْمَتْ وَمَنْ اغْتَسَلَ فَذَلِك أَفْضَلُ.

Whoever performs ablution for Jumu'ah that is fine and good but whoever performs a bath is better.

The hadith above was recorded by Ahmad, Abu Dawud, An-Nasai, and At-Tirmidhi. The hadith contains the well-known problem of chain connection; that is the fact that Al-Hasan did not hear from Samurah ﷺ.

There are other Ahadith expressing a similar meaning (of the non-obligation of performing bath for Jumu'ah Prayer). The scholars say such Ahadith remove the command from having the effect of an obligation to that of recommendation; that however is when what they mention can actually remove the command of obligation.

Such a statement cannot remove the command of obligation in a statement of the Prophet ﷺ like this:

حَقٌّ عَلَى كُلِّ مُسْلِمٍ أَنْ يَغْتَسِلَ فِي كُلِّ سَبْعَةِ أَيَّامٍ يَوْمًا يَغْسِلُ فِيهِ رَأْسَهُ وَجَسَدَهُ.

It is imperative on every Muslim to take a bath once every seven days; a day he will wash his head and body.

The hadith is Sahihayn and other books of hadith and was recorded on the authority of Abu Hurairah ﷺ.

I have exhausted talks on the ruling on taking bath for Jumu'ah in Sharhul-Muntaqaa; you can read further in it.

It is not hidden that specifying bath to the coming of Jumu'ah indicates that it is for prayer not the day.

As for the legality of taking bath for the Two Eid, it has been reported from his action in the hadith of Al-Faakih bin Sad ﷺ that the Prophet ﷺ used to take bath every Jumu'ah, Day of Fitr and Day of Slaughter. Ahmad recorded the hadith so also Ibn Majah, Al-Bazzar, and Al-Baghawi. Ibn Majah recorded a similar report on the authority of Ibn Abbas ﷺ. Al-Bazzar recorded it on the authority of Abu Rafi; there is weakness in all their chains but they give power to one another; reports from the Companions also give strong backing to the act.

As for the legality of taking bath when one washes the dead, that is derived from what Ahmad recorded so also the Collectors of the Sunan on the authority of Abu Hurairah ﷺ from the Messenger of Allah ﷺ, that the he said:

مَنْ غَسَّلَ مَيِّتًا فَلْيَغْتَسِلْ وَمَنْ حَمَلَهُ فَلْيَتَوَضَّأْ.

Whoever washes a dead person should perform a bath and whoever carries him should perform ablution.

This hadith has been reported from various paths. It was found faulty due to non-linkage to the Prophet ﷺ, but the Companions, and that there is one Salih Mawlah At-Tawamah in its chain. However Tirmidhi saw the hadith as being sound and Ibn Al-Qattan authenticated it, so also Ibn Hazm ﷺ. The hadith was also reported via other routes apart from Saalihs. Ibn Hajar ﷺ said because of its various routes, the least that can be said about it is that it is sound, and that An-Nawawis ﷺ criticism of At-Tirmidhi for authenticating it is uncalled for. Adh-Dhahabi ﷺ said: 'The hadith is stronger than a number of other Ahadith the jurists often cite as proofs.' Al-Maawardi ﷺ also mentioned that an expert of hadith got about one hundred and twenty routes for the hadith. The like of the hadith was reported from Ali ﷺ as found with Ahmad, Abu Dawud, An-Nasai, Ibn Abi Shahybah, Abu Yala, Al-Bazzar and Al-Baihaqi; so also on the authority of Hudhayfah as found with Al-Baihaqi. Ibn Abi Hatim and Al-Daraqutni said the hadith is not authentic.

The hadith was also reported from 'A'ishah ﷺ that the Prophet ﷺ used to do so, as found with Ahmad and Abu Dawud.

Ali was of the opinion that the bath is compulsory, so also Abu Hurairah ﷺ, the Imamiyyah, and an opinion reported from An-Nasir.

Majority of the scholars are of the opinion that the bath is only recommended. They said the order contained in the hadith is mitigated by the following Ahadith:

إِنَّ مَيِّتَكُمْ يَمُوتُ طَاهِرًا فَحَسْبُكُمْ أَنْ تَغْسِلُوا أَيْدِيَكُمْ.

...indeed your dead one dies pure, it is sufficient that you wash your hands...

The hadith was recorded by Al-Baihaqi; Ibn Hajar said the hadith is sound.

Another report that removes the obligation of taking a bath after washing a dead Muslim is this: 'We used to wash our dead ones, there were some of us who would take bath and some of us would not.' The hadith was recorded by Al-Khatib on the authority of Ibn Umar ﷺ. Ibn Hajar also said its chain is authentic.

And the verdict that came from the Companions to Asma bint 'Umays ﷺ the wife of Abu Bakr – when she washed him and said to them: 'Indeed the day is severely cold; I am fasting, should I perform a bath?' They replied that she should not. Malik ﷺ recorded the report in Al-Muwata.

As for the legality of performing a bath on assuming Ihrâm, that is derived from the hadith of Zaid bin Thabit ﷺ who said he saw the Prophet ﷺ remove his cloth to put on clothes for hajj rites and he performed a bath in the process. At-Tirmidhi, Al-Daraqutni, Al-Baihaqi and At-Tabarani recorded the hadith. At-Tirmidhi said it is sound. Al-Uqayli however said it is weak. Perhaps the latter saw it weak due to the presence of Abdullah bin Yaqub Al-Madani in the chain. Ibn Al-Mulaqin ﷺ said in Sharh Minhaaj: 'At-Tirmidhi said the hadith is sound perhaps he knew Abdullah bin Yaqub;' that is, he knew he is better.

Also in the section, on the authority of 'A'ishah ﷺ as found with Ahmad, and on authority of Asma ﷺ as found with Muslim (in his Sahih), (that the act of taking bath for Ihram is established).

Majority of the scholars are of the view that taking bath for Ihram is recommended. An-Nasir said it is obligatory. Al-Hasan Al-Basri and Malik said the report may imply compulsion.

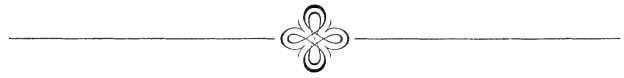
As for the legality of taking bath when entering Makkah, it is derived from

what Muslim recorded on the authority of Ibn Umar ﷺ that he (Ibn Umar) would not enter Makkah except that he would sleep at Tuwa until morning then he would perform a bath and would enter Makkah in the afternoon. He used to mention that the Prophet ﷺ used to do the same. Al-Bukhari recorded a report with a similar meaning. Ibn Hajar said in Fath al-Bari that Ibn Al-Mundhir said that taking bath when entering Makkah is a recommendable act as all the scholars opined. Scholars however say there is no expiation for not taking the bath. Meanwhile most of the scholars are of the view that ablution suffices the bath.

باب التيَمّم

Chapter 1.11 Dry Ablution

Tayammum



Tayammum is recommendable for whatever makes ablution necessary, so also whatever necessitates ghusl – for whoever cannot get water or fears that he will be harmed if he uses water. The parts to be rubbed are the face and the two palms; he will rub over them just once with one strike (on the earth surface), he will make an intention and mentioning the Name of Allah in the process. What vitiates the ablution vitiates it as well.

Explanation:

The ruling regarding Tayammum comes with excuse; thus it has the same ruling as ablution that is imperative for worships so far the person does have impurity due to seminal release. The ruling for ghusl due to Janaba that it suffices for prayers is the same for ablution. All recommendable acts that can go with performing ablution equally go with ghusl; thus with ghusl, one can observe a number of prayers. The validity of a bath is not limited to a Salah, so also it will neither be vitiated due to other acts after the Salah or nor with the passing of its time, as the best opinion. The difference of opinions as regard Tayammum is well-known. The Shari'ah proofs that have come over the legality of Tayammum – when there is no water – are authentic in the Book of Allah and the Sunnah of His Messenger ﷺ.

As for the issue of performing Tayammum due to an envisaged harm from using water, it is derived from what Abu Dawud, Ibn Majah, and Al-Daraqutni recorded on the authority of Jabir ﷺ. He said that they went out on a journey, and then a man among them was hit by a rock and caused a serious injury to his head. The man later had a wet-dream upon which he asked his companions if they knew whether he could make use of sand for ablution in place of ghusl. They said he could not make use of sand so far he could use water. The man made use of water and that led to his death. When they got to the Messenger of Allah ﷺ and was informed of the incident, the Messenger of Allah ﷺ said:

قَتَلُوهُ قَتَلَهُمُ اللَّهُ أَلَا سَأَلُوا إِذْ لَمْ يَعْلَمُوا فَإِنَّمَا شِفَاءُ الْعِيِّ السُّؤَالُ إِنَّمَا كَانَ يَكْفِيهِ أَنْ يَتَيَمَّمَ وَيَعْصِرَ أَوْ يَعْصِبَ عَلَى جُرْحِهِ خِرْقَةً ثُمَّ يَمْسَحَ عَلَيْهَا وَيَغْسِلَ سَائِرَ جَسَدِهِ.

They killed him, may Allah cause their death (too). Why didn't they ask when they did not know? Indeed, the cure to ignorance is asking. It would have been sufficient for him if he had performed Tayammum and tied a piece of cloth over the spot of his injury then rubbed over them and washed the rest of his body.

The report had only come from Az-Zubayr bin Khariq; he was not strong (in narrations). Ibn As-Sakan ﴿رحمه الله﴾ had rated the report authentic. The report had also come via another route of Ibn Abbas ﴿رضي الله عنهما﴾.

The majority of the scholars are of the opinion that Tayammum is only legal when there is a reason for it. Al-Imam Ahmad bin Hanbal ﴿رحمه الله﴾ was of the opinion that Tayammum cannot be performed due to fear from harm of using water; Al-Imam Al-Shafi'i ﴿رحمه الله﴾ was also of that opinion – in a report from him. The following Verse throws weight behind the hadith:

وَإِنْ كُنْتُمْ مَرْضَى أَوْ عَلَى سَفَرٍ أَوْ جَاءَ أَحَدٌ مِنْكُمْ مِنَ الْغَائِطِ أَوْ لَامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا

...but if you are ill (or on a journey, or any of you comes from the Ghaait (toilet), or you have been in contact with women, and you find no water) , then perform Tayammum with clean earth... [Al-Maidah: 6]

So also is the hadith that permit wiping over a bandage which was recorded on the authority of Ali ﴿رضي الله عنه﴾. So also was the hadith of Amr Ibn Al-Aas ﴿رضي الله عنه﴾ when the Messenger of Allah ﴿ﷺ﴾ sent him to the Battle of Chains. It occurred that Amr had a wet-dream in a cold night which made him to perform Tayammum and led his people in Salah. When they arrived back in Madinah they mentioned what happened to the Messenger of Allah ﴿ﷺ﴾ who thereafter said: 'You led your people in prayers while you are in a state of sexual impurity?' Then Amr mentioned this Statement of Allah:

وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيماً

...and do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you." [An-Nisa: 29].

Then Amr ﴿ﷺ﴾ said he performed Tayammum and prayed.

Upon hearing that, the Messenger of Allah ﴿ﷺ﴾ laughed and did not say anything.

The report was recorded by Ahmad, Al-Daraqutni, Ibn Hibban, and Al-Hakim; Al-Bukhari also recorded it as a muallaq [i.e. in a suspended form].

As for saying that the parts to be rubbed when performing Tayammum are the face and the two palms, that is derived from what authentic Ahadith have come with. Among such is the hadith of Ammar bin Yasir ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ commanded him to perform Tayammum by rubbing the face and the two palms. The hadith was reported by At-Tirmidhi and other collectors of hadith; and he authenticated it.

Another hadith is the one that has come in the Sahihayn on the authority of Ammar Ibn Yasir) that the Prophet ﴿ﷺ﴾ said to him:

إِنَّمَا كَانَ يَكْفِيكَ هَكَذَا فَضَرَبَ النَّبِيُّ بِكَفَّيْهِ الْأَرْضَ وَنَفَخَ فِيهِمَا ثُمَّ مَسَحَ بِهِمَا وَجْهَهُ وَكَفَّيْهِ.

It suffices you that you do this way.'

Then the Prophet ﴿ﷺ﴾ struck his two palms on earth surface then he blew (lightly) into them then rubbed them over his face and two palms.

In the wording of Al-Daraqutni, the Messenger of Allah ﴿ﷺ﴾ said:

(يَا عَمَّارُ) إِنَّمَا كَانَ يَكْفِيكَ أَنْ تَضْرِبَ بِكَفَّيْكَ فِي التُّرَابِ ثُمَّ تَنْفُخَ فِيهِمَا ثُمَّ تَمْسَحَ بِهِمَا وَجْهَكَ وَكَفَّيْكَ إِلَى الرُّسْغَيْنِ.

[O Ammar,] it suffices you to strike the sand with your palms, then blow

(lightly) into them, and then rub them over your face and palms up to the wrists.

Atta, Makhul, Al-Auzai, Ahmad, Ishaq, Ibn Al-Mundhir and all the scholars of hadith ﷺ were of the opinion that Tayammum is rubbing the two palms from the two hands.

That was the opinion expressed (by Al-Nawawi ﷺ) in Sharh Muslim.

The majority of the scholars were of the opinion that Tayammum extends to the elbows. Imam Az-Zuhri ﷺ even said the armpits must be rubbed. Al-Khattabi ﷺ said: 'None of the people of knowledge disputed the fact that Tayammum does not go beyond the elbows.

The truth however is what the first group above has expressed because the proofs relied upon by the majority of the scholars (mentioned in the second opinion) stand on no footing. Among such proofs is the hadith of Ibn Umar ﷺ as found with Al-Daraqutni, Al-Hakim and Al-Baihaqi; reported linked to the Messenger of Allah ﷺ, that he said:

التَّيَمُّمُ ضَرْبَتَانِ ضَرْبَةٌ لِلْوَجْهِ وَضَرْبَةٌ لِلْيَدَيْنِ إِلَى الْمِرْفَقَيْنِ.

Tayammum is two strikes (on the earth), one for the face, and another one for the two hands up to the elbows.

There is Ali bin Dhabyaan in the chain. Al-Daraqutni ﷺ said: Yahya Al-Qattan ﷺ saw it as a statement of a Companion; that was also the opinion of Hushaym and other than him. Al-Haafidh Ibn Hajr (Ibn Hajar) ﷺ said it is weak, and that Al-Qattan, Ibn Main and some other scholars have rendered it weak also ﷺ.

As for the word, 'two hands,' as it has come in some of the reports of Ammar ﷺ, what can be said regarding it is that the absolute reports will be understood from the restricting ones; those mention that it is the two palms (alone) that should be rubbed.

What Az-Zuhri ﷺ relied on (in his opinion stated above) is what has come in a report of Ammar also ﷺ, that the Prophet ﷺ asked him to rub his hands up to the armpits. Al-Imam Al-Shafi'i ﷺ mentioned that the ruling had been abrogated.

As for the assertion that Tayammum is one strike, that is because it has been well-established in the authentic Ahadith; the reports that oppose that are not

authentic. That is the opinion of the majority of the scholars, that Tayammum is one strike for the face and the palms. A number of scholars and jurists say it must be two strikes – one for the face and the other for the palms. Ibn Al-Musayyib and Ibn Sireen in their opinion said it must be three strikes – one for the face, one for the palms, and one for the forearms.

As for the need to have an intention before performing Tayammum, and mentioning the Name of Allah, it is derived from what was earlier said about ablution because Tayammum comes in place of ablution. The proofs for intention cut across all deeds.

As for the assertion what vitiates the ablution vitiates Tayammum, it is derived from what we said regarding the fact that Tayammum comes in place of ablution. Therefore, whoever establishes anything as being capable of vitiating Tayammum while he does not establish the same for ablution, such a claim will not be accepted except he comes up with proofs, and there is no proof that can substantiate such a claim. Therefore it becomes imperative that we say what vitiates ablution vitiates Tayammum.

As for a situation when water is found before the period for the Prayer one has offered with Tayammum elapses, among the two men who observed their prayers with Tayammum and after which they found water, the Prophet ﷺ told the man who did not repeat his prayer that his deed was in consonance with the Sunnah. The hadith is very popular.

As for his statement ﷺ to the one that repeated his Prayer: 'You will have double rewards', it was because the fellow repeated the act of worship thinking that it was imperative on him to do so, thus he would have another reward in addition to the first. The purport of the hadith is nothing but allotting rewards and removal of obligation. What gives weight to that was the statement of the Messenger of Allah ﷺ: 'You acted in consonance with the Sunnah' because acting in accordance with Sunnah has a lot of goodness and blessing. It also suggests that whatever was other than that was against the Sunnah as it was apparent in the hadith.

As for the assertion that one of what may necessitate performing Tayammum is an excuse of inability to use water or fear of an injury it may cause, there is no doubt that this falls under what we said with regard to the issue of absence of water and fear of use of water. Thus whoever cannot use water is like a person who cannot find it, since the requirement is not that of what is available and not beneficial, but otherwise.

Thus whoever can see water inside a deep well but is unable to reach it anyhow, such will be regarded as not being able to find water. The same applies to the fear one may have as regards treading the path to get water. So also is the case of someone who might cause impurity to a pool of water if he were to take

birth in it. So also is the person whom the only water available before him is for drinking (if he were to use it for ablution he might die of thirst), he is regarded as someone who cannot find water.

As for what is said that elapsing of prayer time goes with the use of water and that meeting up with the prayer is considered an excuse for the necessity of Tayammum. Such a statement has no basis; rather it is obligatory that water is used. If observing the prayer after its time had elapsed is due to permissible reasons such as sleep, forgetfulness and what is similar, indeed Allah do not place any obligation of observing the prayer on him except at the time (he wakes or remembers), while he uses the form of purification that has been made obligatory on him primarily.

But if observing the prayer after its time had elapsed is to no excuse, then he must perform ablution even if that will cause him not meet up with the time. He will be regarded as having committed a sin.

As for what is said regarding the need to search for water for some specific distances before Tayammum could be performed, that has no basis at all.

باب الحَيْض

Chapter 1.12 Menstruation

Al-Hayd



No good proof has come over its minimum and maximum level as it affects purification from it; whether the blood is much or little. Women on a particular manner of having their menstrual circle will always work with it while other women consider other factors. Also menstrual blood is different from other bloods, a woman will be regarded as being in her Period whenever she sees the menstrual blood. She will be regarded as a Mustahaadah (a woman who is having a constant flow of blood from her private region) whenever she sees any other blood (apart from the known menstrual blood), but she will be considered clean. Such a woman will only have to wash away the traces of the blood, and performs ablution for each Prayer. A woman in her menstrual period will neither observe Salah nor fast nor have sexual intercourse, until she takes a bath after becoming clean and she will thereafter repay her missed days of fasting.

Explanation:

The proofs that have come over the minimum days for Hayd are either reports that are only linked to the Companions of the Messenger of Allah ﷺ, which thus stand no ground to establish such a ruling, or those that are traceable to the Messenger of Allah ﷺ but not authentic, which cannot be relied upon as well. Rather; what is considered is the period individual woman is accustomed to, for those who have their regular periods of menstruation, while others work with other factors associated with the menstrual blood.

It has come authentically in a number of hadith wherein the Messenger of Allah ﷺ expressed that the known and stable period of a woman is considered.

A hadith like that is the following:

إِذَا أَقْبَلَت الْحَيْضَةُ فاتْرُكِي الصَّلَاةَ فَإِذَا ذَهَبَ قَدْرُهَا فَاغْسِلِي عَنْكِ الدَّمَ وَصَلِّي.

When the Period returns then leave off the Prayer, but when its calculated period goes wash off the blood from you and observe the Prayer.

Al-Bukhari recorded the hadith. It was also recorded by other than him on the authority of 'A'ishah ﴿ﷺ﴾. Muslim and other Collectors of Hadith recorded the like of the hadith on the authority of 'A'ishah ﴿ﷺ﴾. Ahmad, Abu Dawud, and Ibn Majah also recorded on the authority of Ummu Salamah ﴿ﷺ﴾ that she sought a religious verdict from the Prophet ﴿ﷺ﴾ as regards a woman who experiences a continuous flow of blood; he ﴿ﷺ﴾ said:

لِتَنْظُرْ قَدْرَ اللَّيالِي وَالأَيَّامِ الَّتِي كانَتْ تَحِيضُهُنَّ وَقَدْرَهُنَّ مِنَ الشَّهْرِ فَتَدَعَ الصَّلاةَ.

She should observe the number of nights and days she used to have her Period in a month, and leave off Prayers for the period.

The hadith is sufficient as a proof. So also is the hadith of Zaynab bint Jahsh ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ said as regard a woman who used to have a continuous blood-flow (Istihaadah) that she should refrain from Prayers during the days of her menstrual period. The hadith was recorded by An-Nasai. There are several other hadith over the issue.

As for returning to other factors relating to menstrual blood, what establishes that is the hadith of Fatimah bint Abi Hubaysh ﴿ﷺ﴾ who used to experience continuous flow of blood. The Prophet ﴿ﷺ﴾ said to her:

إِن كَانَ دَمُ الْحَيْضِ فَإِنَّهُ أَسْوَدُ يُعْرَفُ فَإِذَا كَانَ كَذَلِكَ فَأَمْسِكِي عَنْ الصَّلَاةِ وَإِذَا كَانَ الْآخَرُ فَتَوَضَّئِي وَصَلِّي فَإِنَّمَا هُوَ عِرْقٌ.

If it is a menstrual blood, it is a darkish known blood. If it is such, then refrain from Prayers. But if it is other kind of blood, perform ablution and pray; that is but a disease of the vein.

The hadith was recorded by Abu Dawud and An-Nasai, it was also recorded and authenticated by Ibn Hibban and Al-Hakim, so also it was recorded by Al-Daraqutni, Al-Baihaqi and Al-Hakim but with the addition:

فَإِنَّمَا هُوَ دَاءٌ عَرَضَ أَوْ رَكْضَةٌ مِنَ الشَّيْطَانِ أَوْ عِرْقٌ انْقَطَعَ.

...it is either a disease set into the body, or a kicking from Shaytan, or the result of broken vein.

A Mustahaadah is a woman that has a continuous flow of blood. She should consider her normal period of menstruation; within those days she will observe her monthly Period, wherein the rulings pertaining to women menstrual blood will be applicable to her. However, in other days within the period of the flow of blood she will consider herself clean, thus the ruling pertaining to women out of menstrual period will apply to her. The import of the authentic narrations that have come over this issue is this.

Moreover, if a Mustahaadah is a woman who does not have a regular period of menstruation, like a lady who just begins menstruation or a woman who lost her count, she will have to examine the blood. The menstrual blood is known to be darkish as the Messenger of Allah ﷺ had said, so whenever she sees that type of blood, she will regard herself as being in her menstrual period for the span of the time she observes it, and when she sees the blood other than that, she will consider herself clean.

There have been several talks, studies and specification over this issue, however, the issue is simpler than it has been approached in some of those lengthy discussions.

As for the assertion that a woman that sees a continuous flow of blood should wash away the trace of blood, the proof for that is the statement of the Messenger of Allah ﷺ in the hadith that authentically reported from 'A'ishah رضي الله عنها in the Sahih:

فَاغْسِلِي عَنْكِ الدَّمَ وَصَلِّي.

...wash off the blood from you and begin to observe Prayer...

There is another report that has the same meaning as that of the hadith above.

As for the assertion that a woman in a state of continuous flow of blood should perform ablution for each Prayer, that is what has come in an acceptable manner. Thus if she combines two Prayers such that she delays the first one till its later part and hastens the second to its earlier part such that she observes both with one ablution, that is permissible.

There is no authentic report that makes it obligatory upon the woman to take birth for every Prayer or that she should take birth for two Prayers she intends to combine, so also the report that states that she takes birth every day. Rather;

what has come authentically is that it is obligatory upon her to perform ghusl having finished her normal period, or after the expiration of what might replace her normal period, if she is type that is just carrying out a probability test for other factors. This has come in the hadith recorded on the authority of 'A'ishah ﴿ﷺ﴾ in the Sahihayn and some others in this version:

فَإِذَا أَقْبَلَتْ الْحَيْضَةُ فَدَعِي الصَّلَاةَ فَإِذَا أَدْبَرَتْ فَاغْسِلِي عَنكِ الدَّمَ وَصَلِّي.

...when your (menstrual) period comes then refrain from Prayers and when it goes, perform ghusl and begin to pray...

As for what has come in Sahih Muslim that Umm Habibah ﴿ﷺ﴾ used to perform ghusl for each Prayer, there is no proof in that. Because she only did that on her own volition, the Prophet ﴿ﷺ﴾ never commanded her to do so, rather what he ﴿ﷺ﴾ said to her was:

امْكُثِي قَدْرَ مَا كَانَتْ تَحْبِسُكِ حَيْضَتُكِ ثُمَّ اغْتَسِلِي.

What is apparent from the above report is that such woman would have to perform ghusl after she had refrained from Prayers for the period her menstrual cycle used to hold her from Prayers. The bath is the compulsory bath she must take after her menstrual cycle; the fact that she would have to perform ghusl for each Prayer is not in the report.

There have come some reports legislating that ghusl be performed for each Prayer, but the reports as numerous as they are, are not sufficient as proof. Besides the fact that they conflict with the ones that have been established in the Sahih, great difficulty is associated with performing such ghusl particularly for women that are known for their little intelligence and deficiency in religious practice.

The Shari'ah is merciful and simple:

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

...and [Allah] has not laid upon you in religion any hardship... [Al-Hajj: 78]

فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ

So keep your duty to Allah and fear Him as much as you can... [At-Taghabun: 16].

As for the assertion that a woman in her menstrual cycle will neither observe Prayers nor fast, the proof for that is the authentic reports that have come over the issue such as:

أَلَيْسَ إِذَا حَاضَتْ لَمْ تُصَلِّ وَلَمْ تَصُمْ.

Is it not that when she menstruates she neither observe Prayers nor fasts?

The hadith above is recorded in the Sahihayn and others on the authority of Abu Sa'id ﷺ. All the scholars agree as to its proof on the issue.

As for the fact that a woman in her period will not have sexual intercourse (with her husband,) that is what Al-Qur'an indicates; Allah the Almighty said:

وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ قُلْ هُوَ أَذًى فَاعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ

They ask you concerning menstruation. Say: that is an Adhā (a harmful thing for a husband to have a sexual intercourse with his wife while she is having her menses), therefore keep away from women during menses... [Al-Baqarah: 222].

The narrations that have come from the Prophet ﷺ over this issue are numerous, and among which is:

اصْنَعُوا كُلَّ شَيْءٍ إِلَّا النِّكَاحَ.

...you can do every other thing (with her when she is in her menstrual period) except sexual intercourse.'

The report is recorded in the Sahih. Scholars generally agree over the prohibition of the act; there is no difference of opinion over it. So also is the prohibition of Prayers

And fasting upon the woman in her Period, as it is in the prohibition of having sexual intercourse with her. All the acts are prohibited until she performs a bath after becoming clean as proofs have clearly stated.

As for the fact that a woman in her Period will have to repay her missed days of fasting, the proof for that is the hadith of 'A'ishah ﴿ﷺ﴾ with this version:

We were commanded to repay our missed days of fasting but not Prayers,' as it has come in the Sahihayn and others. Ibn Al-Mundhir, Al-Nawawi, and some other scholars have reported the consensus of the scholars on that.

Ibn Abdil-Barr reported from a group of Khawaarij that they used to make it obligatory on women to repay their missed days of Prayers during their menstrual cycle. The position of these 'dogs of hell' has no effect with regard to the Consensus of the Ummah.

باب النِّفَاس

Chapter 1.13 Rulings on Post Partum Bleeding

An-Nifas



Nifas (post-partum period) is for forty days at most. There is no limit to its minimum duration thus it is like the hayd.

As for the assertion that the maximum time for Nifas is forty days, the proof for that is the hadith recorded on the authority of Umm Salamah ﷺ who said: During the era of the Prophet ﷺ, women used to observe their post partum period for forty days.

Ahmad, At-Tirmidhi, Al-Daraqutni and Al-Hakim recorded the hadith. The hadith has several routes that strength one another. And the majority of the scholars have come to accept its import.

There is another opinion which says that women in post-partum period sit for at most sixty days. Some gave the maximum days to be seventy days, some made it fifty days, while others say twenty days plus a few. The truth is however the first opinion (that says it is forty days).

As for the assertion that there is no limit to its minimum period; no proof has come regarding that. The fact remains that so far the blood still comes; the woman will be regarded as being in her post-partum period. If the blood ceases before forty days, then she ceases from being affected by the rulings on women in post-partum period. But if the blood exceeds forty days, she will regard herself as a woman suffering from continuous flow of blood if she has passed her known normal period.

As for the assertion that a woman in her post-partum period is like a woman in her menstrual cycle as regards the ruling of the impermissibility of having sexual intercourse, and abstinence from Prayers and fasting, there is no difference of opinions over that.

So also, women in post-partum period will not make up the days of Prayers they missed.

In a report recorded by Abu Dawud on the authority of Umm Salamah ﷺ, she said: 'One the wives of the Prophet ﷺ used to observe her post partum

period for forty (days and) nights, the Prophet ﷺ would not command her to make up her missed days of Prayers.

The Consensus on the fact that women in their menstrual cycle will not repeat their missed days of Prayers had been earlier mentioned, so also it is over the issue of post partum period. It is possible that the Khawaarij will differ from this consensus as did on other. If they do so, their difference shall not be reckoned with.

2 كتاب الصَّلاة
Book of Salah
Prayers

مواقيت الصلاة

Chapter 2.1 Times of Salah

The earlier time for Zhuhr Prayer is after the sun leaves the zenith; its later time is when the shadow (of an object) becomes the same as the object without the shade of the zenith. When the shadow becomes as just mentioned is the earlier time for Asr Prayer; the later time for Asr Prayer is so far the sun remains whitish and the sky is clear. The earlier time for Maghrib Prayer is when the sun sets and its later time is when the red twilight disappears, and the latter is the earlier time for Ishaa Prayer whose later time is middle of the night. The earlier time for Fajr Prayer is when the dawn appears and its later time is when the sun rises. Whoever sleeps off his Prayer or forgets it, its time is when he remembers it. Whoever has an excuse (for not meeting up with a Prayer time) but meets up a Rak'at (a unit) from the Prayer before its time finally elapses has indeed met up the Prayer. Prayers at their appointed times are obligatory. Merging two Prayers due to an excuse is permissible. As for somebody who performs Tayammum and a person who reduces Prayer or falls short of proper purification due to an excuse, he will observe the Prayer without further delay. Times in which Prayers are disliked are as follow: After Fajr Prayer until the sun rises, so also is when the sun is at zenith and after Asr Prayer until the sun sets.

Explanation:

As for specifying the earlier and later times for Prayers, that has been established in authentic Ahadith from what Jibril taught the Prophet ﷺ as and what he ﷺ taught the person who once asked him as regard it. There are other statements and actions of the Prophet ﷺ to that effect.

As for the assertion that the later time for Asr Prayer is so far the sun remains whitish and the sky is clean, it means that when the sun becomes yellowish, the time of Asr Prayer will elapse. The proof for that is what has come in the reports from the Prophet ﷺ such as the hadith recorded on the authority of Ibn Amr who said: The Messenger of Allah ﷺ said:

وَقْتُ صَلاة الظُّهْرِ مَا لَمْ يَحْضُرِ الْعَصْرُ وَوَقْتُ صَلاة الْعَصْرِ مَا لَمْ تَصْفَرَّ الشَّمْسُ وَوَقْتُ صَلاةُ الْمَغْرِبِ مَا لَمْ يَسْقُطْ نُوْرُ الشَّفَقِ وَوَقْتُ صَلاة الْعِشَاءِ إِلَى نِصْفِ اللَّيْلِ وَوَقْتُ صَلاة الْفَجْرِ مَا لَمْ تَطْلُعِ الشَّمْسُ.

The time for Zhuhr Prayer is so far the time for Asr Prayer has not set in. The time for Asr Prayer is so far the sun has not become yellowish. The time for Maghrib Prayer is so far the glow of the twilight has not fallen. The time for Ishaa Prayer is up to the middle of the night. The time for Fajr Prayer is so far the sun has not risen.

The hadith was recorded by Muslim so also Ahmad, An-Nasai and Abu Dawud.

What has come in the hadith as regards the latest time Asr and Isha Prayers could be observed is not conflicting with what has come in some other Ahadith (that the Messenger of Allah ﷺ said:

أَنَّ آخِرَ وَقْتِ العَصْرِ مَصِيْرُ ظِلِّ الشَّيءِ مِثْلَيهِ وَآخِرَ وَقْتِ العِشَاءِ ذَهابُ ثُلُثُ اللَّيْلِ.

Indeed the latest time for Asr Prayer is when the shadow of an object doubles its length and the latest time for Ishaa Prayer is when one-third of the night passes.

The hadith above has an addition that does not conflict with the earlier hadith used as the basis, because the time when the sun becomes yellowish comes after the time the shadow doubles the length of an object; the sun still remains whitish and clean after the shadow doubles the length of an object. So also is the matter of middle of the night (as regards Ishaa Prayer), it includes non-conflicting addition found in the report of 'one-third of the night'; a middle of the night if farther than its one-third. This explanation is on the premise that the version that contains the additions is more authentic than the first.

As for the assertion that the time of Prayer of anyone who sleeps off a Prayer or forgets it is when he remembers it; there are many authentic Ahadith indicating that. Such as the hadith recorded on the authority of Anas ﷺ as found with Al-Bukhari and Muslim, and other than them. So also is the hadith recorded on the authority of Abu Hurairah ﷺ as found with Muslim and some others? This meaning has come in more than a perspective.

As for the assertion that whoever meets a Rak'at in a Prayer meets the Prayer, the proof for that is what has come in the authentic Ahadith such as the hadith recorded on the authority of Abu Hurairah ﷺ that the Messenger of Allah ﷺ said:

مَنْ أَدْرَكَ مِنْ الصُّبْحِ رَكْعَةً قَبْلَ أَنْ تَطْلُعَ الشَّمْسُ فَقَدْ أَدْرَكَ الصُّبْحَ وَمَنْ أَدْرَكَ مِن العَصرِ رَكعَةً قَبْلَ أَنْ تَغْرُبَ الشَّمْسُ فَقَدْ أَدْرَكَ الْعَصْرَ.

Whoever meets a Rak'at from Subh Prayer before the sun rises has met the Subh Prayer, and whoever meets a Rak'at from Asr Prayer before the sun sets has met the Asr Prayer.

The hadith was recorded in the Sahihayn and others. The like of the hadith is the one recorded on the authority of 'A'ishah ﷺ as found with Muslim and others. It has also been established in the hadith recorded on the authority of Abu Hurairah ﷺ as found in the Sahihayn and others with this version:

مَنْ أَدْرَكَ رَكْعَةً مِنْ الصَّلَاةِ فَقَدْ أَدْرَكَ الصَّلَاةَ.

Whoever meets a Rak'at from a Prayer has indeed met the Prayer.

This includes all the Prayers without any exemption.

As for saying that observing a Prayer at its later time should be out of an excuse, this is because times for Prayers have been specified by the Lawgiver the Prophet ﷺ, he has defined their earlier times as well as their later ones with observable signs. He made the span between the two periods of every Prayer its specified time; he made a Prayer observed outside these particular times as Prayers of the hypocrites, and the Prayers of the rulers – those who 'kill'

Prayers. An example of that is the statement of the Messenger of Allah ﷺ on the authority of Anas ﷺ as found in the Sahih wherein he said:

تِلْكَ صَلَاةُ الْمُنَافِقِ يَجْلِسُ يَرْقُبُ الشَّمْسَ حَتَّى إِذَا كَانَتْ بَيْنَ قَرْنَيْ الشَّيْطَانِ قَامَ فَنَقَرَهَا أَرْبَعًا لَا يَذْكُرُ اللَّهَ إِلَّا قَلِيلًا.

That is the Prayer of the hypocrite; he sits watching the sun until it comes between the two horns of Shaytan, then he stands and pecks it four times; he remembers Allah not but a little.

So also is the statement of the Messenger of Allah ﷺ to Abu Dharr ﷺ:

كَيْفَ إِذَا كَانَتْ عَلَيْكَ أُمَرَاءُ يُمِيتُونَ الصَّلَاةَ أَوْ يُؤَخِّرُونَ الصَّلَاةَ عَنْ وَقْتِهَا.

How will you be when you have rulers who 'kill' Prayers or delay Prayers from their time.

Abu Dharr ﷺ said: What do you command me to do (in that situation)?

The Messenger of Allah ﷺ replied:

صَلِّ الصَّلَاةَ لِوَقْتِهَا.

Pray at its time...

So also are the Ahadith wherein the Messenger of Allah ﷺ forbade observance of (optional) Prayers after Asr and Fajr Prayers.

Thus what we mentioned is a proof that meeting a Rak'at at a time outside the stipulated times – like at sun rise and sun set and when the Fajr appears – is specifically for those who have excuses (for not observing them at their actual times). An example of that is a person who becomes sick in a very severe manner and cannot observe the prayer until he is well, or could manage to meet a Rak'at. So also is a woman in her Period who becomes clean and can meet a Rak'at; or similar scenarios.

As for the obligation of timing, the proof for that is the authentic commands as regards the observance of Prayer at its time, so also its forbiddance at a time outside its stipulated times.

As for merging between two Prayers, if it is done in form; that is, observing the first at its later time and the second at its earlier time, that is not merging in the real sense. This is so because every Prayer has its stipulated time. An example of that was the merging the Messenger of Allah ﷺ did in Madinah without any reason of either rain nor journey as it has come in the Sahih and some others on the authority of Ibn Abbas رضي الله عنهما. Clear expressions from the hadith have indicated that the merging was in form (not in essence). Rather the companion that reported the narration explained in a way that implied that the merging was not in essence but in form.

We have discussed this issue clearer in a book of ours. However, the permissibility of merging two Prayers is actually for those who have excuses such as a traveller, a sick one, or merging due to rainfall, as it has come from authentic proofs.

Scholars differ as to merging between two Prayers without any of these reasons, or without any reason at all; the truth however is the impermissibility of that.

As for the assertion that a person who performed Tayammum and one who reduced Prayer is like someone who has an ailment which prevents him from completing the pillars of the Prayer. And that a person who falls short of ablution is like someone who has defects in some of his limbs which prevents him from washing those affected parts. These people will have to observe their Prayers without further delay. That is from the perspective that they fall within those who are commanded to observe Prayers as at when due, and the explanation of the earlier and later times of the Prayers have been given. There is no indication that they are excluded from these specifications, or that their Prayers will not be accepted except at their later times.

He that says what is obligatory upon such people is that they should observe the Prayer at the later time has no standing ground, it is rather a baseless opinion; like when he says: Their Prayers are substitutions or the likes of such technicalities that hold no water in the least.

As for the assertion that observance of prayers is frowned at after Fajr Prayer until sun rises, when sun reaches the zenith, and after the Asr Prayer until sun sets. That is due to what has been established in the Sahih from a number of the companions of the Messenger of Allah ﷺ in a traceable report to Prophet ﷺ regarding the prohibition of observing Prayers after Fajr until sunrise, after Asr until sunset, and at zenith. There are also some other reports prohibiting observance of Prayers during the three periods: At sunrise, when the sun reaches zenith, and at sunset.

باب الأَذَان

Chapter 2.2 Adhan

Call to Prayer



It is legislated that the inhabitants of every town have a caller to prayer who calls them to Prayer with the legitimate words for call-to-prayer when it is time for Prayer. It is legislated as well for whoever hears him call-to-prayer to repeat what he says. The Iqamah is also legislated to be said as it has come under the Shari'ah.

Know that Adhan is part of the symbols of the Deen of Islam. Scholars differ as to whether it is obligatory or not; what is however apparent is that it is obligatory due to the command that had come from the Messenger of Allah ﷺ in more than a hadith. Therefore it becomes imperative for the inhabitants of a town to have a caller to prayer among them who will call them to prayer using the legitimate words of the Adhan to alert them on the times for Prayers, and so that they will be seen as holding to the symbols of the Deen.

During and after the time of the Messenger of Allah ﷺ, when the status of a city was unknown, whether its inhabitants were Muslims or not, they would be observed till the time of any Prayer. If the Muslim warriors heard a call-to-prayer, they would wage war against the inhabitants of that city. But if they did not hear any call-to-prayer, they would fight them as they would fight against the polytheists.

Other people apart from the inhabitants of a town such as a traveller or someone who stay in a desolate place, he would have to make call-to-prayer for himself and then the Iqamah. If they are in a group, one of them will make the call and the Iqamah.

The wordings of the Adhan have been established in a number of Ahadith. Some of the Ahadith possess some additions while others reductions; and the rule is that additions in the reports will be worked with so far they do not negate the essence of the reports. Thus whatever has come authentically in a manner of calling the Adhan that contains a specific action will be accepted; an example of that is repeating each sentence of the Adhan four times, so also repeating in low tones the statements of testimony (ashhadu an la ila-ha illa Allah, ashhadu anna Muhammadan Rasulullah).

An additional report will not be discarded even if the basic proofs are stronger than it because no confliction will be regarded until strong like-hood of

preference is made, as it occurred to a lot of people of knowledge under this section and others as well. Rather; it is preferred that the reports are united if that is possible.

There is a consensus over acceptance of additional report which does not conflict with what has been established in the fundamentals.

Meanwhile, the proofs for saying the wordings of the Iqamah once are stronger than the proofs that say they can be said twice, but doing the latter is inclusive of the additional report that falls outside a dependable source. Therefore acting upon the proofs of saying the wordings of the Iqamah twice are singled out of this rule.

As for the legality of repeating what the caller to prayer says, it has been established in the Sahih on the authority of Abu Sa'id ﷺ that verily the Prophet ﷺ said:

إِذَا سَمِعْتُمْ النِّدَاءَ فَقُولُوا مِثْلَ مَا يَقُولُ الْمُؤَذِّنُ.

When you hear the call-to-prayer, say the like of what the caller says.

Also under the section, there is a like report from a number of the companions of the Messenger of Allah ﷺ. A more detailed one has come from the report of Umar bin Al-Khattab ﷺ who said the Messenger of Allah ﷺ said:

إِذَا قَالَ الْمُؤَذِّنُ اللَّهُ أَكْبَرُ اللَّهُ أَكْبَرُ فَقَالَ أَحَدُكُمْ اللَّهُ أَكْبَرُ اللَّهُ أَكْبَرُ ثُمَّ قَالَ أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ قَالَ أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ ثُمَّ قَالَ أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ قَالَ أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ ثُمَّ قَالَ حَيَّ عَلَى الصَّلَاةِ قَالَ لَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ ثُمَّ قَالَ حَيَّ عَلَى الْفَلَاحِ قَالَ لَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ ثُمَّ قَالَ اللَّهُ أَكْبَرُ اللَّهُ أَكْبَرُ قَالَ اللَّهُ أَكْبَرُ اللَّهُ أَكْبَرُ ثُمَّ قَالَ لَا إِلَهَ إِلَّا اللَّهُ قَالَ لَا إِلَهَ إِلَّا اللَّهُ مِنْ قَلْبِهِ دَخَلَ الْجَنَّةَ.

When the caller-to-prayer says Allah-u-akbar Allah-u-akbar (Allah is Great! Allah is Great!), and each of you says Allah-u-akbar Allah-u-akbar. And when

he (the caller) says Ashadu anl-laa Ilaha illa Allah (I testify that only Allah is worthy of worship), he says Ashadu an-laa Ilaha illa Allah. And when he (the caller) says Ashadu anna Muhammadan Rasulullah (I testify that Muhammad is indeed the Messenger of Allah), he says Ashadu anna Muhammadan Rasulullah. When he (the caller) says hayya alas-salah (It is time for Prayer), he says La hawla wa la quwwata illa bi-llah (there is no power nor strength except with Allah). And when he (the caller) says hayya alal-falaah (It is time for success), he says La hawla wa la quwwata illa bi-llah. When he (the caller) says Allah-u-akbar Allah-u-akbar, he says Allah-u-akbar Allah-u-akbar. And when he (the caller) says La Ilaha illa Allah (There is none worthy of worship except Allah), he says La Ilaha illa Allah from his heart he will be admittedto al-Jannah (Paradise).

The hadith was recorded by Muslim and others. Al-Bukhari also recorded its like.

Some scholars prefer merging saying hayya alas-Salah and hayya alal-falaah with La hawla wa la quwwata illa bi-llah; so as to combine between following the caller and saying La hawla wa la quwwata illa bi-llah. This view of merging the statements is a good one even though it is not binding.

باب شروط الصّلاة

Chapter 2.3 Conditions of Salah



It is obligatory upon the person who wants to observe Salah (Prayer) to clean his clothes, body, and place (of worship) from filth. He should also cover his nakedness. Also, he should not wrap himself up totally nor should he allow his wrapper to hang down, or his loin-cloth to hang down bellow his ankle. He should not also restrain (his clothes or hair from falling on ground when he prostrates). He should also neither observe Prayers in clothes made of silk nor clothes of fame or clothes usurped from another person. He must face the Ka'bah if he can see it before him or has the ruling of one who can see it. As for the person who cannot see the Ka'bah, he has to face its direction after making an effort over that.

Explanation:

As for the command to clean the clothes, the proof for that is the text of the Qur'an:



And purify your garments! [Al-Muddaththir: 4]

Another proof was the statement of the Messenger of Allah ﷺ to the fellow who asked him if he could observe his prayer in a cloth with which he copulated with his wife. The Prophet ﷺ answered him in an affirmative but said: Except if you see something (that is, dirt), then you should wash it.

Ahmad and Ibn Majah recorded the hadith; the men of the chain are trustworthy.

The like of the hadith was recorded on the authority of Muaawiyah ﷺ who said: 'I said to Umm Habibah: Did the Prophet ﷺ used to observe Prayer in a cloth with which he copulated?' She ﷺ said: 'Yes provided it did not contain any filth.' Ahmad, Abu Dawud, An-Nasai and Ibn Majah recorded the hadith with a chain made of trustworthy men.

Another hadith regarding these conditions of purification was the one recorded about the removal of the Prophet's ﷺ footwear (due to filth while

in prayer); a hadith recorded by Abu Dawud, Al-Hakim, Ibn Khuzaymah and Ibn Hibban. The hadith has various routes from a number of the companions of the Messenger of Allah ﷺ; routes that empower the hadith. Among such routes were the ones that were earlier mentioned that specifically discussed filths.

As for the necessity of cleaning the body, this is because cleaning the body is logically more deserving and imperative to the cleaning the clothes, so also because of the available proofs that have come over its obligation.

As for cleaning the place, the proof for that is what has been established from the Messenger of Allah ﷺ regarding his command that buckets of water should be poured over the urine of the Bedouin (who urinated into his masjid ﷺ), and similar proofs as such. The majority of the scholars were of the opinion that it is obligatory to clean the three that has been mentioned above. Some of them are even of the view that cleaning them is a condition for acceptance of Prayer. While some of them simply opined that it is meritorious to do that. The truth however is that it is obligatory, it is neither a condition for acceptance of Prayer nor only a meritorious act). Therefore whoever observed a Prayer while he knowingly puts on clothes upon it filth, such has indeed fallen short of what is expected of him; his Prayer is however valid. There are different proofs for this issue and a lot have been written over it. We are not going to delve into that here.

As for the obligation of covering the nakedness, the proof for that was what occurred from the Prophet ﷺ regarding his command to that effect in all circumstance. That has come in the hadith reported by Bahz bin Hakeem, from his father and then from his grandfather ﷺ who said: I said: O Messenger of Allah, our nakedness; what should we do regarding it?

The Messenger of Allah ﷺ replied:

احْفَظْ عَوْرَتَكَ إِلَّا مِنْ زَوْجِكَ أَوْ مَا مَلَكَتْ يَمِينُكَ.

Guard your nakedness except from your wife or your slave girl (rightly possessed by you).

I said: What if men are within one another, what should they do?

He replied:

إِنْ اسْتَطَعْتَ أَنْ لَا يَرَاهَا أَحَدٌ فَلَا يَرَيَنَّهَا.

If you can prevent everyone from seeing it do so.

I said: 'What if any of us is alone?' The Prophet ﷺ replied:

اللَّهُ تَبَارَكَ وَتَعَالَى أَحَقُّ أَنْ يُسْتَحى مِنْهُ.

Allah the Almighty and Blessed is more deserving of your bashfulness.

Ahmad, Abu Dawud, At-Tirmidhi, and Ibn Majah recorded the hadith. Al-Bukhari recorded it in a suspended form; At-Tirmidhi graded it as hasan while Al-Hâkim graded it as sahih.

Another proof was the statement of the Messenger of Allah ﷺ to Ali Ibn Abi Talib ﷺ):

لَا تُبْرِزْ فَخِذَكَ وَلَا تَنْظُر إِلَى فَخِذِ حَيٍّ وَلَا مَيِّتٍ.

Do not expose your thigh, and never should you look at the thigh of any living or dead person.

Abu Dawud, Ibn Majah, Al-Hakim, and Al-Bazzar recorded the hadith. There is a problem with its chain but the hadith of Muhammad bin Jahsh ﷺ empowers it. He (Muhammad) said: 'The Messenger of Allah ﷺ walked by Mamar ﷺ while his (Mamar) thighs were exposed. The Messenger of Allah ﷺ said to him:

يَا مَعْمَرُ غَطِّ فَخِذَيْكَ فَإِنَّ الْفَخِذَيْنِ عَوْرَةٌ.

O Mamar, cover your thighs. Indeed the two thighs are nakedness.

Ahmad and Al-Bukhari recorded the hadith, the latter recorded it in a suspended form, and he recorded it in his book at-Tarikh. Al-Hakim too recorded it in his Al-Mustadrak.

At-Tirmidhi, Ahmad and Al-Bukhari, in his sahih, recorded on the authority of Ibn Abbas ﷺ that the Messenger of Allah ﷺ said:

الْفَخِذُ عَوْرَةٌ.

Indeed the thigh is nakedness.

Malik recorded the like of the hadith above in his Al-Muwatta, so also Ahmad, Abu Dawud and At-Tirmidhi who graded it as hasan. Ibn Hibban too recorded it and he graded as sahih. Al-Bukhari recorded it in a suspended form.

As for the knees, there is a report saying they should be covered too; and there is another report saying the opposite.

As for a woman, there is a report saying:

لَا يَقْبَلُ اللَّهُ صَلَاةَ حَائِضٍ إِلَّا بِخِمَارٍ.

Allah will not grant the Prayer of a grown-up woman except she wears her cover-cloth.

Ahmad, Abu Dawud, At-Tirmidhi, Ibn Majah, Ibn Khuzaymah and Al-Hakim recorded it.

The hadith was also recorded back to the Messenger of Allah ﷺ on the authority of 'A'ishah and Abu Qatadah ﷺ.

Among other proofs indicating the obligation of covering the nakedness are the reports forbidding observing Prayer in a single cloth with no covering upon the shoulder of the person observing the Prayer. In some of the routes of the hadith, there is this statement:

فَلْيُخَالِفْ بَيْنَ طَرَفَيْهِ.

Let him pass the tips of the cloth in opposite directions.

In some, it says:

وَإِنْ كَانَ ضَيِّقًا فَاتَّزِرْ بِهِ.

If it is short, let him make it a loin-cloth.

All the routes are found in the Sahih Al-Bukhari.

As for the assertion: 'He should not wrap himself up totally.' That is indicated from the hadith of Abu Hurairah ﷺ that the Prophet ﷺ forbade that one should wrap up oneself completely. The hadith can be found in the Sahihayn; there is a wording therein that one should not wrap oneself up in one's loin-cloth when he observes Prayer except if he passes the tips of the cloth over his shoulder in opposite directions.

The Jamaah[7] recorded the like of the hadith; on the authority of Abu Sa'id ﷺ.

Ishtimalu as-Sama: the act of wrapping one's whole body with a cloth such that no side it goes up, nor is there any opening where he can remove the hands.

As for his statement: 'nor should he allow his wrapper to hang down.' The proof for that is the hadith that prohibits allowing one's wrapper to hang down in Prayer. The hadith can be found with Ahmad, Abu Dawud, At-Tirmidhi and Al-Hakim in his Al-Mustadrak; as was recorded on the authority of a number of the Companions of the Messenger of Allah ﷺ.

As-Sadl is when a man hangs down the only wrapper on him restraining its two ends from meeting before him; rather he wraps himself with the cloth, keeps his hands inside, bows and prostrates like that, (in which case his private region is exposed).

7 Here, he referred to Al-Bukhari, Abu Dawud, An-Nasai, Ibn Majah and Al-Imam Ahmad who recorded the hadith. The Jamaah is mostly used for Al-Bukhari, Muslim, Abu Dawud, At-Tirmidhi, An-Nasai, and Ibn Majah, though some of the scholars include Musnad Al-Imam Ahmad, while others include Muwatta of Al-Imam Malik. [Editor]

As for his statement: 'nor should he allow his loin-cloth to hang down bellow his ankle.' The proof for that is the authentic Ahadith prohibiting allowing the loin-cloth to hang down. What is intended by this prohibition is allowing the loin-cloth to go down such that it passes the two ankles.

As for his statement: 'nor should he restrain (his cloth or hair from falling on ground when he prostrates),' there is a proof prohibiting a man from restraining his cloth or hair from falling (on the ground when he prostrates). As for the former, it is like when a person gets hold of the tip of his cloth and then ties it around his loin, or what is similar. As for the latter, is when a person takes a part of the hair that exceeds others, then tucks or ties it with a thread to others, or a similar thing.

As for his statement, 'he should also not observe Prayers in clothes made of silk,' the proofs for that are the various Ahadith that have come over the issue which all indicate the prohibition of taking pure silk.

As for wearing cloth that has a mixture of silk materials, the positions of the schools-of-thought are well-known as regarding that. Some of the Ahadith indicate that what is prohibited is wearing pure silk not mixed fabric. An example of Ahadith indicating that is the hadith of Ibn Abbas ﷺ as recorded by Ahmad and Abu Dawud wherein Ibn Abbas ﷺ said: The Messenger of Allah ﷺ only prohibited cloth made of pure silk.' He said: 'As for a fabric made of silk or a design therewith, we do not see anything against that.

There are some Ahadith indicating that they are forbidden altogether as it has come regarding the complete dress of As-Siyara; the Prophet ﷺ became angry when he saw Ali ﷺ putting it on. He ﷺ said:

إِنِّي لَمْ أُبْعَثْ بِهَا إِلَيْكَ لِتَلْبَسَهَا إِنَّمَا بَعَثْتُ بِهَا إِلَيْكَ لِتُشَقِّقَهَا خُمُرًا بَيْنَ النِّسَاءِ.

Verily, I have not been raised with it for you to put on; I was raised with it so that you make it coverings for women.

The hadith can be found in Sahih.

The cloth of As-Siyara; some said is a cloth mixed with silk, that is, it is not pure silk. Some said it is a sewn pure silk. There are other opinions. Meanwhile it occurred in one of the routes of the hadith what indicates that As-Siyara is not pure silk.

Ibn Abi Shaybah, Ibn Majah and Ad-Duuruqi recorded the hadith in this

version: Ali ﷺ said: The Messenger of Allah ﷺ made a gift of a cloth of As-Siyara to me, weaved with silk either vertically or horizontally …

As for the prohibition from putting on cloth of fame, the proof for that is this hadith:

مَنْ لَبِسَ ثَوْبَ شُهْرَةٍ فِي الدُّنْيَا أَلْبَسَهُ اللَّهُ ثَوْبَ مَذَلَّةٍ يَوْمَ الْقِيَامَةِ.

Whoever puts on a cloth of fame in this life, Allah will wear him with cloth of disgrace on the Day of Resurrection.

Ahmad recorded the hadith so also Abu Dawud and An-Nasai with a chain of trustworthy men; on the authority of Ibn Umar ﷺ.

The threat indicates that putting such cloth is forbidden at all times; especially at the times of Prayers.

As for clothes dyed with yellow and red colours, proofs that have come over their permissibility or otherwise are conflicting. That is the reason we did not mention it in the text. We have dealt with that issue in one special work.

As for the forbiddance of putting on usurped clothes, that is because they are clothes owned by other people. Consensus has come over the fact that such clothes are forbidden.

As for the obligation of facing the Ka'bah upon the person who can see it and those that fall within the ruling of those who can see it, the proof for that is because since the Ka'bah can be seen, that forms a reality that cannot be forsaken for a doubt. There are various Ahadith, that reach the level in which they are not to be doubted, that clearly state that it is obligatory to face the Ka'bah. In fact, that is the declaration of the Qur'an:

فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ

So turn your face in the direction of Al-Masjid Al-Haram (at Makkah). [Al-Baqarah: 144].

The Muslims have come to agree over that point. It is one of binding and undisputable rulings of the Shari'ah. As for the fact that it is obligatory upon

the person who cannot see the Ka'bah and whoever is under the ruling that they should face its direction, it is because that is what is easy for them to do, and that is what has come under their ability. Allah has not placed upon a soul what it cannot bear, as Allah has made that clear in His Glorious Book.

Indeed the Messenger of Allah ﷺ has made what is between the east and west Qiblah, as it has come in the hadith reported by Abu Hurairah ﷺ as recorded by At-Tirmidhi and Ibn Majah. The line of that hadith also came from the Rightly Guided Successors (Abu Bakr, Umar, Uthman and Ali; ﷺ).

Prophet ﷺ faced the direction of Ka'bah for his prayers when he left Makkah, and that was what he legislated for his nation.

باب كيْفيّة الصّلاة

Chapter 2.4 Manners of Observing Salah



A Prayer is not accepted according to the Shari'ah prescription except with intention. All the pillars of Prayer are obligatory except the sitting for the Middle Tashahhud and the sitting of rest. There is nothing obligatory in the words of remembrance in all the units of the Prayer except the statement of Allahu-Akbar (at the opening) and recitation of the Opening Surah (Surah Al-Fatihah) even if one were to pray behind the Imam; so also is the Last Tashahhud and the word of Tasleem (to terminate the Prayer). Every other act apart from those mentioned is Sunan (meritorious). They include the following: Raising (the hands) in four states, placing the hands on the chest, making the Opening Supplications after saying the Takbir, seeking refuge in Allah from Shaytan, saying Aamin, reciting a Surah after the Opening Surah, the Middle Tashahhud, the words of remembrance that have come in all the pillars, and saying much supplications for the good of this life and the hereafter; those have been specifically reported and other selected ones.

Explanation:

As for the assertion that Prayer will not be accepted except with intention, the proof for that is what was earlier mentioned under the issue of ablution.

As for the obligation of the pillars of Prayer, it is because they are the essence of Prayer with which one fulfils the religious responsibility placed on him regarding Prayers, and when they are absent, one has not given what is expected of him; and when some of these pillars are not offered as expected, the prayer becomes incomplete. The pillars are the following: Standing, proper bowing, rising (from bowing), proper prostration, rising (from prostration), and the act of sitting for Tashahhud. The lawgiver (that is, the Messenger of Allah ﷺ) has indeed given their descriptions and manners in a way that their spans are closer to one another as it has been established in the Sahih from him ﷺ.

As for the non-obligation of the Middle Tashahhud, it is because there is no evidence specifically stipulating it so as it is the case with the Last Tashahhud. The Ahadith that contain commands regarding the Tashahhud have only pointed to the obligation of the Last Tashahhud.

If you were to say that the Prophet ﷺ but mentioned the Middle Tashahhud in the hadith of the fellow that made mistake in his Prayer, as it has come in

the version of Abu Dawud on the authority of Rifaah ﷺ, wherein the Last Tashahhud was not mentioned.

I reply thus: There is no proof in such a narration, and it could not be used to establish general religious responsibility upon the people. The Last Tashahhud, even though it was not mentioned in the hadith of the fellow that made mistake in his Prayer, there are other commands that established it; and the Companions of the Messenger of Allah ﷺ did make clear its obligation.

As for the non-obligation of Jilsatu-Istirahah (Sitting of Rest) it is because there is no proof to establish its being obligatory. To say it was mentioned in the hadith of the fellow that made mistake in his Prayer is an error as Al-Bukhari ﷺ clarified.

As for the assertion that Takbir (that is, saying Allahu-Akbar) is obligatory, that can be deduced from the Statement of Allah the Almighty:



And Your Lord (Allah) magnify! [Al-Muddaththir: 3]

And the Prophet's statement ﷺ to the fellow that made mistakes in his Prayer:



When you stand in Prayers say Allahu-u-Akbar.

Another proof for the obligation of saying the Takbir is the report that has states that saying Takbir (when commencing prayers) makes other acts non-permissible in Prayer.

As for the obligation of reciting Surah Al-Fatihah in each of the units, the proof for that is the statement of the Messenger of Allah ﷺ in the hadith of the fellow that made mistakes in his Prayer as thus:

اقْرَأْ مَا تَيَسَّرَ مَعَكَ مِنْ الْقُرْآنِ

Then recite what you can of the Qur'an you have with you.

There is a version of the hadith, as found with Abu Dawud, wherein what the Prophet ﷺ told the fellow was:

ثُمَّ اقْرَأْ بِأُمِّ الْقُرْآنِ

Then recite the Mother of the Qur'an.

That is what occurs in the version of Ahmad and Ibn Hibban but with an addition as thus:

ثُمَّ اصْنَعْ ذَلِكَ فِي كُلِّ رَكْعَةٍ

Then carry out all that in each unit

The statement came after the Messenger of Allah ﷺ mentioned:

ثُمَّ اقْرَأْ بِأُمِّ الْقُرْآنِ

Then recite the Mother of the Qur'an.

Thus that explains what he ﷺ meant by saying 'what you can'.

There are some other reports, apart from the hadith of the fellow that made mistakes in his Prayer, indicating the obligation of reciting the Opening Surah. An example of such Ahadith is this:

لَا صَلاةَ إِلَّا بِفَاتِحَةِ الكِتَابِ

There is no Prayer except with the recitation of the Opening Chapter.

The hadith is authentic and it indicates the obligation of recitation of the Opening Chapter in each unit that was mentioned in the hadith of the fellow that made mistakes in his Prayer. That is because the Prophet ﷺ explained to him what he would do in each of the units, and from what he commanded him is the recitation of the Opening Chapter. Thus, it falls within what is obligatory in each of the units just as all that were mentioned together with it are obligatory in each unit. In fact, there is an indication to this assertion from the Messenger of Allah ﷺ, and that can be found in his words ﷺ to the fellow that made mistakes in his Prayer:

ثُمَّ افْعَلْ ذَلِكَ فِي الصلاةِ كُلِّهَا

Then carry all that out in your Prayers.

The report is in the Sahih on the authority of Abu Hurairah ﷺ. The Messenger of Allah ﷺ said that to him after he had explained to him what he would do in a unit, not all the units of the Prayer. Thus that is a good indication that what is intended by 'Prayer' (in his statement "in your Prayers") is represented by the unit of the Prayer.

As for the obligation of the person following the Imam to recite the Opening Chapter in each of the units of the Prayer, the proofs for that are the evidences pointing to the fact that the person praying behind the Imam too would have to recite the Opening Surah.

An example of such reports is this:

لَا تَفْعَلُوا إِلَّا بِفَاتِحَةِ الْكِتَابِ

Do not (recite behind me) except the Opening Chapter.

There are similar reports.

Another proof is the fact that the person praying behind the Imam is included in the effect of the proofs that indicated that recitation of the Opening Chapter is obligatory in every unit upon everyone observing the Prayer.

As for the obligation of the Last Tashahhud, that is due to the command that has come over that in the authentic narrations; the wordings of such narrations are well known. Some of them have come from a number of Companions of the Messenger of Allah ﷺ although in different manners. The truth however is that it is permissible for the person observing the Prayer to choose any one of that so far it is one that might be deemed proper among those manners of saying the Tashahhud that have come authentically. But the most authentic of them all is the one Messenger of Allah ﷺ taught Ibn Mas'ud which has come in the Sahihayn, and others, as thus:

التَّحِيَّاتُ لِلَّهِ وَالصَّلَوَاتُ وَالطَّيِّبَاتُ السَّلَامُ عَلَيْكَ أَيُّهَا النَّبِيُّ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ السَّلَامُ عَلَيْنَا وَعَلَى عِبَادِ اللَّهِ الصَّالِحِينَ أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ

At-Tahiyyatu Lillah Was-Salawat wat-Tayyibat, As-Salam Alayka Ayyu-annabiyy wa rahmatul-lah wa barakatu-hu as-Salam alayna wa ala 'ibadi-llahis-Saliheen. Ashadu anla ila-ha illa Allah wa ashadu anna muhammadan abdu-hu wa rasuulu-hu [Greetings to Allah; benedictions and good words. Peace unto you, O Prophet; Allah's mercy and blessings. Peace unto us and upon the righteous slaves of Allah. I bear the testimony that none is worthy of worship except Allah and bear the testimony that Muhammad is His slave and messenger.]

In some of the wordings of the hadith, he ﷺ said:

إِذَا قَعَدَ أَحَدُكُمْ فَلْيَقُلْ

When any of you sits in Prayer...

As for the act of beseeching benedictions on the Prophet ﷺ, which the person observing Prayer is expected to carry out in his Tashahhud, it has also

come with various wordings. All what has come authentically in the variations can be made use of. Among such is this hadith in the Sahih:

اللَّهُمَّ صَلِّ عَلَى مُحَمَّدٍ وَعَلَى آلِ مُحَمَّدٍ، كَمَا صَلَّيْتَ عَلَى إِبْرَاهِيمَ وَعَلَى آلِ إِبْرَاهِيمَ، إِنَّكَ حَمِيدٌ مَجِيدٌ، و بَارِكْ عَلَى مُحَمَّدٍ، وَعَلَى آلِ مُحَمَّدٍ، كَمَا بَارَكْتَ عَلَى إِبْرَاهِيمَ وَعَلَى آلِ إِبْرَاهِيمَ، إِنَّكَ حَمِيدٌ مَجِيدٌ

O Allah send benedictions upon Muhammad and the household of Muhammad, as You sent benedictions upon Ibrahim and the household of Ibrahim, verily You are praiseworthy and Gracious. O Allah, bless Muhammad and the household of Muhammad, as You blessed Ibrahim and the household of Ibrahim, verily You are praiseworthy and Gracious.

There is also a report indicating the obligation of seeking refuge in Allah from four certain matters, as Muslim and others recorded it on the authority of Abu Hurairah ﴿ﷺ﴾ who said the Messenger of Allah ﴿ﷺ﴾ said:

إِذَا فَرَغَ أَحَدُكُمْ مِنْ التَّشَهُّدِ فَلْيَتَعَوَّذْ بِاللَّهِ مِنْ أَرْبَعٍ: مِنْ عَذَابِ جَهَنَّمَ وَمِنْ عَذَابِ الْقَبْرِ وَمِنْ فِتْنَةِ الْمَحْيَا وَالْمَمَاتِ وَمِنْ شَرِّ الْمَسِيحِ الدَّجَّال

When any of you finishes from the Last Tashahhud, let him seek refuge in Allah from four things: The punishment of the hell, punishment of the grave, trial of life and death, and the evil of the False Messiah.

The like of that did come in the hadith recorded on the authority of 'A'ishah ﴿ﷺ﴾, as found in the Sahihayn and others. Therefore seeking refuge from those four things indicates the completion of one's Tashahhud. After that, one can make choice of any supplication that might interest one as the Messenger of Allah ﴿ﷺ﴾ guided to that.

As for the obligation of saying the Tasleem (of terminating the Prayer), the proof for that is the fact that the Messenger of Allah ﴿ﷺ﴾ made it what to terminate the Prayer with. There is no other means of terminating the Prayer except with it. It is that fact that makes the act a compulsory act of the Prayer even though it was not mentioned in the hadith of the fellow that erred in his Prayer.

As for the assertion that other acts apart from those mentioned in the foregoing are only meritorious, that is due to the fact that nothing has come to indicate they are obligatory, whether a command to do them or a prohibition from not leaving them. Therefore the acts will not be considered as going out of their actual initial forms, or inform a serious threat that can make them be regarded as obligation. Also, those acts were not mentioned in the hadith of the fellow that erred in his Prayer except perhaps in a manner that may not suffice as proofs or suffices but has come from other sources what negates their compulsion.

As for the legality of raising the hands in four states: at saying the Opening Takbir, bowing, rising from bowing and when rising from the third unit (in a three or four-unit Prayer). The legality of that has been indicated in several authentic reports.

As for the legality of raising the hands while saying the Opening Takbir, it was reported from the Prophet ﷺ by almost fifty men from among the Companions رضي الله عنهم, among whom were the Ten whom the glad tidings of Jannah was given to. Also, a number of succeeding scholars reported it from those Companions without any exception, such that Imam Al-Nawawi in Sharh Muslim said: 'The Ummah generally agreed upon the legality of that (raising the hands) when saying the Opening Takbir but disagreed regarding other positions.

It was the opinion of Dawud, the Literalist, that raising the hand when saying the opening Takbir is obligatory, so also was Abu Al-Hasan Ahmad bin Sayyaar [and An-Naysabuuri], so also Al-Auzai, Al-Humaydi and Ibn Khuzaymah رحمهم الله.

As for the act of raising the hand when bowing and when rising from it, more than twenty Companions reported it. Muhammad bin Nasr Al-Marwazi said: The scholars of the cities have come to agree over that except those of Kufah.

As for raising the hand when rising to the third unit, that act is established in the Sahih on the authority of Ibn Umar رضي الله عنه as was recorded by Ahmad, Abu Dawud, An-Nasai, Ibn Majah and At-Tirmidhi who authenticated it. Ahmad bin Hanbal رحمه الله also authenticated it on the authority of Ali bin Abi Talib رضي الله عنه who reported it from the Messenger of Allah ﷺ.

As for the issue of placing the right hand over the left when standing, whether on the chest, below the navel, or in between both, about eighteen Companions of the Messenger of Allah ﷺ reported it. Such that Ibn Abdil-Barr said: What contradicts that was not reported from the Messenger of Allah ﷺ.

As for the supplication to be made when one wants to commence the Prayer there are different Ahadith over that; any one that is chosen suffices, so far if it is authentic. But the most authentic of those supplications is the one Abu

Hurairah ﷺ reported from the Messenger of Allah ﷺ as found in the Sahihayn and others. In fact it was said that the hadith was severally reported in different routes that cuts off every doubt about its authenticity. The wording of the hadith goes thus:

اللَّهُمَّ بَاعِدْ بَيْنِي وَبَيْنَ خَطَايَايَ كَمَا بَاعَدْتَ بَيْنَ الْمَشْرِقِ وَالْمَغْرِبِ، اللَّهُمَّ نَقِّنِي مِنْ خَطَايَايَ كَمَا يُنَقَّى الثَّوْبُ الْأَبْيَضُ مِنْ الدَّنَسِ، اللَّهُمَّ اغْسِلْنِي من خَطَايَايَ بِالْمَاءِ وَالثَّلْجِ وَالْبَرَدِ

O Allah, make a distance between me, and my sins as you have made distance between the east and the west. O Allah, cleanse me from my sins as the white cloth is cleansed from dirt. O Allah, wash me from my sins with water, ice and cold water.

As for saying the supplication will come after the Takbir, there is no contrary report from the Messenger of Allah ﷺ as regarding that; all those who reported the supplication of the opening from him said he ﷺ did it after the Takbir.

As for the act of seeking refuge in Allah, there are many authentic reports on it; that the Prophet ﷺ used to do it after saying the supplication of the opening before he commences the recitation. This is the wording:

أَعُوذُ بِاللَّهِ السَّمِيعِ الْعَلِيمِ مِنْ الشَّيْطَانِ الرَّجِيمِ مِنْ هَمْزِهِ وَنَفْخِهِ وَنَفْثِهِ

I seek refuge in Allah the All-Hearer and All-Knower from the devil the accursed from his whispering, arrogance and magic.

That is the hadith as recorded by Ahmad and the Collectors of Sunan on the authority of Abu Sa'id Al-Khudri ﷺ.

As for saying the Aamin, about seventeen Companions reported it from the Messenger of Allah ﷺ. Some of the Ahadith that have come over the matter even indicate that it might be obligatory upon the person following an Imam in Prayer to say it when the Imam says it. That is recorded in the hadith of Abu Hurairah ﷺ as contained in the Sahihayn and others that the Messenger of Allah ﷺ said:

إِذَا أَمَّنَ الْإِمَامُ فَأَمِّنُوا

When the Imam says Aamin, you too say Aamin.

Therefore this will indicate that what is in the summary work applies to none than the person following the Imam in Prayer. Many of the people of knowledge are of the opinion that it is legal to do so. What adds to its legality is its vexation to the Jews. That is deduced from what was recorded by Ahmad and Ibn Majah, so also At-Tabarani on the authority of 'A'ishah ﷺ who reported from the Messenger of Allah ﷺ that he said:

مَا حَسَدَتْكُمْ الْيَهُودُ عَلَى شَيْءٍ مَا حَسَدَتْكُمْ عَلَى قَوْلِ آمِينِ

The Jews envy you not on anything as they envy you on the saying "Aamin".

As for the recitation of other than the Opening Chapter alongside it, it has been established in the Sahihayn and some others on the authority of Abu Qatadah that the Messenger of Allah ﷺ used to recite the Opening Chapter and two other chapters in the first two units of the Zhuhr Prayer respectively, and in the last two units, he would recite only the Opening Chapter.

There is also a report indicating that it is obligatory to recite any aspects of the Qur'an after Surah Al-Fatihah (the Opening Chapter) without any specification. An example of that is the hadith of Abu Hurairah ﷺ that the Prophet ﷺ commanded him to go out and announce that Prayer would not be accepted except with the recitation of Surah Al-Fatihah and an additional recitation. Ahmad and Abu Dawud reported it and there is fault in its chain. However, Muslim recorded a version in his Sahih as well as some others on the authority of Ubadah bin As-Samit, it states thus:

لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِفَاتِحَةِ الْكِتَابِ وَمَا تَيَسَّرَ فَصَاعِدًا

No Prayer will be accepted of anyone who does not recite the Opening Chapter and other portion.

Al-Bukhari found fault with this narration as mentioned in his special work on recitation (Juzu Qiraaah).

Abu Dawud recorded on the authority of Abu Sa'id ﷺ that they were commanded to recite the Opening Chapter and whatever else was easy for them to recite. Ibn Sayyid Naas ﷺ said the chain of the report is authentic and that its men are trustworthy. Al-Haafidh Ibn Hajr Ibn Hajar ﷺ also said that its chain is authentic.

Ibn Majah recorded on the authority of Abu Sa'id ﷺ in this wording:

لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ فِي كُلِّ رَكْعَةٍ بِالْحَمْدُ لِلَّهِ وَسُورَةٍ

No Prayer is valid for whoever does not recite the Opening Chapter and another chapter.

The hadith is weak.

Meanwhile all the Ahadith do not expressly indicate the obligation of reciting other chapter after the Opening Chapter. In fact, a mere act of reciting one Verse suffices. As for reciting more than that such as reciting a whole chapter after Al-Fatihah in each unit of the first two units, that is not obligatory. Therefore, what is contained in summary work is restricted to what is above a Verse.

As for the Middle Tashahhud, it does not have any special wordings, rather a praying person will say in this position what he will say in the Last Tashahhud but he has to be swifter.

Ahmad recorded and An-Nasai on the authority of Ibn Mas'ud ﷺ that verily [Prophet] Muhammad ﷺ said:

إِذَا قَعَدْتُمْ فِي كُلِّ رَكْعَتَيْنِ فَقُولُوا التَّحِيَّاتُ لِلَّهِ وَالصَّلَوَاتُ وَالطَّيِّبَاتُ السَّلَامُ عَلَيْكَ أَيُّهَا النَّبِيُّ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ السَّلَامُ عَلَيْنَا وَعَلَى عِبَادِ اللَّهِ الصَّالِحِينَ أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ ثُمَّ لْيَتَخَيَّرْ أَحَدُكُمْ مِن الدُّعَاءِ أَعْجَبَهُ إِلَيْهِ فَلْيَدْعُ به رَبَّه عَزَّ وَجَلَّ

When you sit at the end of the second unit, say: 'At-Tahiyyatu Lillah Was-Salawat wat-Tayyibat, As-Salam Alayka Ayyu-annabiyy wa rahmatul-laah wa barakatu-hu as-Salam alaynâ wa alaa 'ibadi-llahis-Saliheen. Ashadu anlaa ilaa-ha illa Allah wa ashadu anna muhammadan abdu-hu wa rasuulu-hu [Greetings to Allah; benedictions and good words. Peace unto you, O Prophet; Allah's mercy and blessings. Peace unto us and upon the righteous slaves of Allah. I bear the testimony that none is worthy of worship except Allah and bear the testimony that Muhammad is His slave and Messenger.] Then each of you should make a choice of any supplication that might interest him, and then he should make it to his Lord.

The men of the chain are trustworthy.

At-Tirmidhi ﴿رحمه الله﴾ recorded it in this version:

عَلَّمَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذَا قَعَدْنَا فِي الرَّكْعَتَيْنِ ....

The Messenger of Allah ﴿ﷺ﴾ taught us that when we sit at the end of the second unit we should say...

The specification that it is at the sitting after the second units indicates that the Tashahhud intended therein is the Middle Tashahhud, but there is nothing there that obviates an addition of beseeching Allah's benedictions upon the Messenger of Allah ﴿ﷺ﴾.

The law stipulated by the Messenger of Allah ﴿ﷺ﴾ in the manner of saying the Tashahhud is that it should go with the act of seeking benedictions upon him as that has come in some of the reports over the issue.

As mentioned, for instance, in this version: '[The Companions asked:] We have known the manner of greeting you, but how do we seek Allah's benedictions upon you?' The hadith can be seen in the Sahihayn on the authority of Kab bin 'Ujrah – may Allah be pleased with him. And there is one that came on the authority of Ibn Mas'ud who asked the Messenger of Allah ﴿ﷺ﴾: How do we seek Allah's benedictions upon you when we observe our Prayers?

The Middle Tashahhud and sitting for it is held not to be obligatory because when the Prophet ﴿ﷺ﴾ left them out of forgetfulness, he went on with his Prayer even when the Companions alerted him by saying 'SubhanAllah', he only later made the prostration of forgetfulness. If they were obligatory he would have repeated them correctly when he was no more in the forgetful state and after he had been alerted by the Companions. Moreover, this point is not

debunked with the fact that Prostration of Forgetfulness is done for obligatory acts just as it is done for non-obligatory acts because what is intended here is the fact that the Messenger of Allah ﷺ did not make corrections even after he was alerted over.

As for the words of remembrance that are said at every position, they are very many. Among them is al-Takbir that is said when going to the bowing and prostrating positions, as well as when getting up and down. That has been indicated in the hadith narrated on the authority of Ibn Mas'ud ﷺ who said: 'I saw the Messenger of Allah ﷺ saying the Takbir in each rising and bowing, and getting up and down.' Ahmad recorded the hadith so also An-Nasai and At-Tirmidhi who said it is authentic. Al-Bukhari and Muslim also have a similar report on the authority of Imran bin Husayn ﷺ; they also recorded its like on the authority of Abu Hurairah ﷺ.

There are several other Ahadith under the section except that they exempt the act of saying the Takbir when rising from the bowing position. It is only the person leading the Prayer and a person observing the Prayer alone that will say: Sami'Allahu man' hamidau (Allah hears he that praises Him) while the person following the Imam would say: Allahumma Rabbanâ Walakal'Hamd (O Allah our Lord, to You belong the Praises). The narration can be found in the Sahih, in the hadith of Abu Musa (Al-Ashari) ﷺ.

As for the word of remembrance to be said in the bowing position, it is Subhana Rabiyyahl-Adheem (Glorified is my Lord Who is Great); at prostration, it is Subhana Rabiyyal-Aalaa (Glorified is my Lord Who is The Most High). Then the person observing the Prayer can make a choice of whatever supplication he might feel like, whether those that have been mentioned from the Prophet ﷺ or otherwise.

The least permissible time to mention the words of praise for Allah in the bowing position and prostration is three times, that is due to what Ibn Mas'ud ﷺ reported that the Prophet ﷺ said:

إِذَا رَكَعَ أَحَدُكُمْ فَقَالَ فِي رُكُوعِهِ سُبْحَانَ رَبِّيَ الْعَظِيمِ ثَلَاثَ مَرَّاتٍ فَقَدْ تَمَّ رُكُوعُهُ وَذَلِكَ أَدْنَاهُ وَإِذَا سَجَدَ فَقَالَ فِي سُجُودِهِ سُبْحَانَ رَبِّيَ الْأَعْلَى ثَلَاثَ مَرَّاتٍ فَقَدْ تَمَّ سُجُودُهُ وَذَلِكَ أَدْنَاهُ

When any of you bows and says in his bowing position Subhana Rabiyyahl-Adheem (Glorified is my Lord Who is Great) three times, such a person has completed his bowing and that is the least he can say. And when he goes to prostration and says 'Subhana Rabiyyahl-Aalaa (Glorified is my Lord Who is

The Most High) three times, he has equally completed his prostration and that is the least he can say.

Abu Dawud, At-Tirmidhi and Ibn Majah recorded the hadith but there is a breakage in its chain.

As for the words of remembrance to be said when rising from the bowing position, it has come authentically in the Sahih in the hadith of Ibn Abbas ﷺ that the Prophet ﷺ was such that when he rose from the bowing position he would say:

اللَّهُمَّ رَبَّنَا لَكَ الْحَمْدُ مِلْءَ السَّمَاوَاتِ وَمِلْءَ الْأَرْضِ وَمِلْءَ مَابينهما وَمِلْءَ مَا شِئْتَ مِنْ شَيْءٍ بَعْدُ، أَهْلَ الثَّنَاءِ وَالْمَجْدِ، أَحَقُّ مَا قَالَ الْعَبْدُ، وَكُلُّنَا لَكَ عَبْدٌ، اللَّهُمَّ لَا مَانِعَ لِمَا أَعْطَيْتَ، وَلَا مُعْطِيَ لِمَا مَنَعْتَ، وَلَا يَنْفَعُ ذَا الْجَدِّ مِنْكَ الْجَدُّ

O Allah, to You belong the Praise that filled the heavens and the earth, and filled what is contained in between the both, as well as whatever You might wish aside those, You are worthy of praise and glory. Most deserving of the words (of praises and glory) said by the slave – and we are all slaves unto You – There is none who can withhold what You gave, and there is none who can give what You withheld, and the wealth of the wealthy cannot benefit him without You.

As for the words of remembrance to be said between the two prostrations; At-Tirmidhi reported it, so also Abu Dawud, Ibn Majah and Al-Hakim who authenticated it, a hadith recorded on the authority of Ibn Abbas ﷺ that the Prophet ﷺ used to say between the two prostrations:

اللَّهُمَّ اغْفِرْ لِي وَارْحَمْنِي وَاجْبُرْنِي وَاهْدِنِي وَارْزُقْنِي

O Allah! Forgive me, have mercy upon me, support me, guide me, and provide for me.

Words of remembrance to be said in Prayer are just too many; therefore one should strive to make as many as possible supplications for the goodness of this life and the hereafter, among those that have been reported, or otherwise. That has been pointed out in the summary work (Mukhtasar).

Be informed that this area of the work requires further explanation; therefore what has been done here is just a reference to what is needed. We have indeed discussed these matters in details in Sharh Al-Muntaqaa, and we brought all what one may need such that an enquiring mind will not turn elsewhere.

باب مبطلات الصّلاة

Chapter 2.5 Nullifiers of Salah

Talking renders the Prayer invalid, so also engaging in the acts that are not part of it, as well as intentional leaving out an important part of it or a pillar.

Explanation:

I say: As for the assertion that the Prayer becomes null due to talking, the hadith of Zaid bin Arqam – may Allah be pleased with him – that is recorded in the Sahihayn and some other works illustrates that. The hadith goes thus: 'We used to talk in Prayers; a man among us would engage his friend in a talk. Until this Verse was revealed.

وَقُومُوا لِلَّهِ قَانِتِينَ

And stand before Allah with obedience. [Al-Baqarah: 238]

We were then asked to remain silent (in Prayers) and forbidden from talking.

It has also come in the hadith of Ibn Mas'ud ﴿رضي الله عنه﴾ in the Sahihayn and other works in this version:

إِنَّ فِي الصَّلَاةِ لَشُغْلًا

Indeed there is preoccupation in Prayer.

In the version of Ahmad, An-Nasai, Abu Dawud, and Ibn Hibban in his Sahih, it goes thus:

Allah introduces in His affairs what He wills, and indeed He has introduced in His affair that we should not talk in Prayers.

There is no disagreement among the people of knowledge that whoever

knowingly talks in his Prayer, that his Prayer is void. They have only disagreed with respect to an act of talking done out of forgetfulness and the one carried out by he who does not know that it is prohibited to do so. However, what is apparent in the hadith of Muaawiyah bin Al-Hakam As-Sulami ﷺ that has come authentically in the Sahih is that one who does know that the act is prohibited will not repay the Prayer. The nature of the Messenger of Allah ﷺ is that he would not want to put an ignorant person into any difficulty. He ﷺ would not command him of a repayment, he would rather explain to him the non-permissibility of what he has done, and he may sometimes command him to repay as it occurred in the hadith of the fellow that made mistakes in his Prayers.

As for the talking done out of forgetfulness, what is apparent is that there is no difference between it and the one done intentionally with regard to its nullification of Prayer.

Also as for the nullification of Prayers due to preoccupation with acts other than acts of Prayers, that is qualified by the fact that the person observing the Prayers would have carried out an act that is grossly out of Prayers. An example of that is a person who preoccupies himself with sewing or carpentry; or if he walks about grossly or sways about greatly or what is similar to that. The reason for the nullification of his Prayer in that instance is that the acts that are expected of the one observing Prayers have changed totally such that anyone that sees him would think that he's engaging in other than Prayers.

As for the nullification of Prayers due to leaving out a condition for the acceptance of Prayers such as ablution, that is because lack of meeting a condition brings the effect of lack of carrying out what has been made to follow the condition.

As for the nullification due to leaving out a pillar of Prayer, that is because its absence implies that the Prayer has been taken out of the manners of its observance that are expected of the person observing it. Thus when a pillar or more is dropped out of forgetfulness, he must repay the act – even if he had left the Prayer – as it occurred to the Messenger of Allah ﷺ in the hadith of Dhul-Yadayn. The Messenger of Allah ﷺ in that narration made the Tasleem (statement of termination of the Prayer at the end of the second Rak'at, he was then alerted after which he ﷺ performed the two Rakahs he left.

As for leaving out what is not a condition or pillar of Prayer; that which is not obligatory, such cannot nullify the Prayer because its absence does not have the effect of nullifying the Prayer. Rather the reality of what is obligatory is that the person that carries it out is praised and whoever fails to carry it out is censured; but the fact the person that fails to carry it out is censured does not imply that the Prayer he so observed is void.

Summarily, the requirements for an act are what make the act established with a proof indicating compliance with the conditions. An example of that is when the lawgiver says: 'Whoever does not do such-and-such has no Prayer.' Or that something comes from the lawgiver stating clearly the nullity of the act, or that it will not be accepted or passed; or that a prohibition has been established from him with regard to going near the act without fulfilling its conditions, this is so because a prohibition indicates nullity which accompanies falsity, as the correct opinion has stated. But when something is obligatory, then that will be held as being established by the mere requirement of it from the lawgiver. But mere act of request of it does not imply the addition that something is obligatory. Ponder over this; you will be free from confusion and mix-up.

باب صلاة اهل الأعذار

Chapter 2.6 Those Excused from Prayers



Prayers are not obligatory on other than the morally responsible ones. And its obligation falls off one who cannot move his limbs, or someone lost consciousness and could not regain it till the time of the Prayer lapses. A sick person can observe his Prayer while standing, sitting, or reclining on his side.

Explanation:

I say: As for the removal of obligation of observance of Prayers from other than the morally responsible ones, it is due to the fact that the reference made to the category of morally responsible ones cannot include other than them; there is no difference of opinion as regard that, concerning the obligatory aspects of the Shari'ah.

As for what has come over training the kids, the command thereof is as respect those who are morally responsible (regarding their children); thus the obligation falls on the old ones not the young ones.

As for the assertion that Prayers are not obligatory upon the person who cannot move his limbs, it is because their being obligatory upon the sick ones whose sickness is that terrible is seen from the perspective of mandating what one cannot bear on one while Allah does burdens anyone with he cannot bear.

So also is the person that lost his consciousness such that he could not regain it until the time of the Prayer had lapsed, there is no obligation on him in that regard because he is not morally responsible at the time.

As for the assertion that the sick person should observe his Prayer while standing, sitting, or reclining on his side, the hadith of Imran bin Husayn ﴿ﷺ﴾ as found with Al-Bukhari illustrates that. The Ahadith can also be found with the Collectors of Sunan and others. Imran ﴿ﷺ﴾ said: 'I was suffering from haemorrhoids then I asked the Messenger of Allah ﴿ﷺ﴾ as regards (my) Prayer, he ﴿ﷺ﴾ then said:

صَلِّ قَائِمًا فَإِنْ لَمْ تَسْتَطِعْ فَقَاعِدًا فَإِنْ لَمْ تَسْتَطِعْ فَعَلَى جَنْبٍ

Observe your Prayers while standing, if you cannot, then do so while sitting, if you cannot also do so, then recline on your side.

The Glorious Qur'an has referred to what that encompasses.

باب صلاة التطوع

Chapter 2.7 Voluntary Prayers



There are four [optional prayers] before the Zhuhr Prayer, four after. Four before Asr, two Rakahs after Maghrib, two after Ishaa, and two before Fajr Prayer. There is also Pre-noon Optional Prayer, so also night prayers – thirteen Rak'at at most, together with the Witr [an odd number of prayers] at the end. So also is Prayer of Greeting the Masjid [Tahiyyatul-Masjid], Prayer of Istikharah [done to ask Allah to make choice for one over issues] and two Rak'at between every Adhan and Iqamah.

Explanation:

As for the legality of observing four optional prayers before Zhuhr and four after it, so also observing four before Asr, that is due to what has authentically come in the hadith of Umm Habibah ﴿ﷺ﴾ who said: 'I heard the Messenger of Allah ﴿ﷺ﴾ say:

مَنْ صَلَّى أَرْبَعَ رَكَعَاتٍ قَبْلَ الظُّهْرِ وَأَرْبَعًا بَعْدَهَا حَرَّمَهُ اللَّهُ عَلَى النَّارِ

Whoever observes four Rak'at before Zhuhr and four after, Allah will make him forbidden for the Hell (to consume).

The hadith was reported by the Ahmad and the Collectors of Sunan; At-Tirmidhi held it to be authentic so also Ibn Hibban.

Ahmad, Abu Dawud, and At-Tirmidhi also reported on the authority of Ibn Umar ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ said:

رَحِمَ اللَّهُ امْرَأً صَلَّى قَبْلَ الْعَصْرِ أَرْبَعًا

May Allah be merciful to he who observes four unit (of optional prayers) before Asr.

At-Tirmidhi held it to be hasan; Ibn Hibban and Ibn Khuzaymah authenticated it.

As for two Rakahs after Maghrib, two after Ishaa, and two before Fajr Prayer, that is due to what has been established in the Sahihayn and some other works in the hadith of Abdullah bin Umar ﷺ. He said: 'I memorized from the Messenger of Allah ﷺ two Rak'at before Zhuhr and two after it, two after Maghrib, two after Ishaa and two before dawn.

Muslim reported the like of the hadith in his Sahih; so also Ahmad, At-Tirmidhi who held it to be authentic, in the Ahadith of Abdullah bin Shaqiq (from 'A'ishah ﷺ). Muslim also reported its like, so also the Collectors of Sunan on the authority of Umm Habiba ﷺ.

What is said in the hadith of Ibn Umar ﷺ here is not affected by what has been earlier stated with regard to the legality of observing four optional prayers before Zhuhr and four after it this is because what has come as an addition is acceptable.

So also it is established in the Sahihayn in the hadith of Aaish ﷺ that the Prophet ﷺ was not severe in the way he held any optional prayers as he was regarding the two optional prayers before Fajr.

It is also established in Sahih Muslim and other works, also in the Ahadith of 'A'ishah ﷺ that: 'The two optional Rak'at observed before the Fajr Prayer are better than the whole world and what it contains.

There are several other Ahadith on the issue.

As for the optional prayer at fore-noon (Duhaa Prayer), there are numerous Ahadith over it, and which have come on the authority of a number of Companions of the Messenger of Allah ﷺ. The least of its unit is two, as it has come in the hadith of Abu Hurairah ﷺ found in the Sahihayn and other books. The highest of the units are twelve Rak'at as some proofs have indicated.

As for the night optional prayers, the authentic Ahadith that have come over it are numerous. We cannot exhaust all of them in this work. The highest of their units are thirteen including an odd number of prayer at its end, either just a Rak'at or he joins with it two Rakahs before it. He ﷺ used to observe night prayers in several manners, at times, he would observe two Rak'at repeatedly after which he would observe one Rak'at to make all what he has observed as odd. At times, he ﷺ would observe four Rak'at repeatedly, and at times, he ﷺ would first observe four Rakahs (separately) and combine the (remaining nine) Rakahs together. All those are established in the Sunnah of the Messenger of Allah ﷺ.

As for the legality of the prayers of greeting the masjid (that is called, Tahiyyatul-Masjid), the hadith over it is as follow:

إِذَا دَخَلَ أَحَدُكُمْ الْمَسْجِدَ فَلَا يَجْلِس حَتَّى يُصَلِّي رَكْعَتَيْنِ

When any of you enters the masjid, he should not sit until he observes two units of prayers.

The hadith was recorded by the Major Collectors on the authority of Abu Qatadah ﷺ. There are several other Ahadith on the matter, among them is the hadith of Jabir ﷺ as found in Sahih Al-Bukhari.

There is an agreement as to the legality of observance of the prayers of greeting the masjid. The literalists are of the opinion that these two units prayer are obligatory, that is not far-fetched. I have discussed the matter in details in the book Sharh al-Muntaqaa, so also in a special work I wrote on the issue.

As for the permissibility of observing the prayers of asking Allah to make a choice for one (prayers of Istikharah), there are several Ahadith on it. Among which is the hadith of Jabir as can be found in Sahih Al-Bukhari and some other books in this version: 'The Messenger of Allah ﷺ used to teach us the prayers of Istikharah in all matters as he ﷺ would teach us a chapter of the Qur'an; he would say:

إِذَاهَمَّ أَحَدُكُمْ بِالْأَمْرِ فَلْيَرْكَعْ رَكْعَتَيْنِ مِنْ غَيْرِ الْفَرِيضَةِ، ثُمَّ لِيَقُلْ: اللَّهُمَّ إِنِّي أَسْتَخِيرُكَ بِعِلْمِكَ وَأَسْتَقْدِرُكَ بِقُدْرَتِكَ وَأَسْأَلُكَ مِنْ فَضْلِكَ الْعَظِيمِ، فَإِنَّكَ تَقْدِرُ وَلَا أَقْدِرُ وَتَعْلَمُ وَلَا أَعْلَمُ وَأَنْتَ عَلَّامُ الْغُيُوبِ، اللَّهُمَّ إِنْ كُنْتَ تَعْلَمُ أَنَّ هَذَا الْأَمْرَ خَيْرٌ لِي فِي دِينِي وَمَعَاشِي وَعَاقِبَةِ أَمْرِي أَوْ قَالَ عَاجِلِ أَمْرِي وَآجِلِهِ فَاقْدُرْهُ لِي وَيَسِّرْهُ لِي ثُمَّ بَارِكْ لِي فِيهِ، وَإِنْ كُنْتَ تَعْلَمُ أَنَّ هَذَا الْأَمْرَ شَرٌّ لِي فِي دِينِي وَمَعَاشِي وَعَاقِبَةِ أَمْرِي أَوْ قَالَ عَاجِلِ أَمْرِي وَآجِلِهِ فَاصْرِفْهُ عَنِّي وَاصْرِفْنِي عَنْهُ وَاقْدُرْ لِي الْخَيْرَ حَيْثُ كَانَ ثُمَّ أَرْضِنِي بِه قَالَ وَيُسَمِّي حَاجَتَهُ

'When any of you worries about of a matter, he should observe two optional

prayers and then say: Allahumma inni ʿastakhiruka bi ʿilmika, wa ʿastqdiruka bi-qudratika, wa ʿas›aluka min fadlikal ʿazhim, fa'innaka taqdir wala ʿaqdir wa talam wala alam, wa ʿanta ʿallamul-ghuyub, Allahumma ʿin kunta talamu ʿanna hadhal-ʿamr [one would then mention his intent] khayrunli fi dini wa maashi waaqibati ʿamri – [or one should say] – ajilihi wa ʿajilihi – faqdur huli wayassir huli thumma barikli fih. Wa ʿin kunta talam ʿanna hadhal-ʿamra sharrunlli fi dini wa maʿashi, wa ʿaqibati ʿamrî – [or one should say] - ʾajilihi wa ʿajilihi – fasrifhu ʿanni wasrifni ʿanhu waqdurliyal-khayra haythu kana thumma ʿardini bi-hi.

O Allah, I seek Your counsel in Your Knowledge, and I seek Your help in Your Omnipotence, and I beseech You of Your Magnificent Favour. Indeed You are able while I am not. You know and I do not, and You are the Knower of the unseen. O Allah, if You know that this matter [one should then mention his intent] is good for me in my religion, my life and in the life to come – [or one should say: '...in this life and in the Hereafter'], then ordain it for me, make it easy for me and bless me with it. And if You know that this affair would be bad for me in my religion, my life and my life to come – [or one should say: '...in this life and in the Hereafter'] keep it away from me and distance me from it, and ordain for me what is good wherever it may be, and make me be contented with it.

As for the permissibility of observing two units of prayers between every Adhan and Iqamah, that is due to this hadith:

بَيْنَ كُلِّ أَذَانَيْنِ صَلَاةٌ

Between the two Adhâns there is prayer.

He said it three times, but said at the third time:

لِمَنْ شَاءَ

For whoever wishes.

The hadith is authentic in Sahih Al-Bukhari.

What is intended by the two Adhans is the Adhan and the Iqamah; Adhan is

mentioned because of its dominating effect in the usage, as in Qamarayn ('the two moons') used to refer to the moon and sun and Umarayn (the two Umar), Umar and Abu Bakr ﷺ.

باب صلاة الجَماعة

Chapter 2.8 Congregational Prayer



It is among the most-emphasized aspects of the traditions of the Messenger of Allah ﷺ. It can be constituted by two persons, however, the reward of the people observing congregational prayers increases as their number increases. It can be observed behind a less superior person, what is however better is that the Imam (leading a congregational prayer) should be from among the best of people. Men should lead women in prayers not vice-versa; the person observing an obligatory prayer should lead the person observing a non-obligatory prayer and this is allowed the other way round. It is compulsory to follow the Imam except in an act that can nullify the Prayer. A person should not lead people that hate him. The person leading should use the weakest person among the congregation as his measurement for the length of the prayer. The Sultan is preferred as the person to lead the prayer so also the owner of a house (as the case may be), so also the best person in knowledge of the Qur'an, then the best person in general religious knowledge, then the oldest person. When the prayer of an Imam becomes faulty then he will be held responsible not the people praying behind him. The people praying behind the Imam should align themselves behind him except if it is just one person who should stand by his right hand. The woman leading other women will stand in the middle of the row. Rows of men should be in the front, followed by the young ones, then women rows. The people more entitled to the first rows are those grounded in knowledge and understanding. The congregation should ensure that they align their rows well and close all the gaps in between. The first row must be well aligned, and then the one that follows it and so on.

Explanation:

As for the assertion that the congregational prayer is among the most-emphasized traditions of the Messenger of Allah, that is due to what has come regarding it in terms of inducement such that the Messenger of Allah ﷺ stated clearly that the congregational prayer supersedes a prayer observed alone in twenty-seven degrees. That is what has come in the Sahihayn. There were reports from him that he ﷺ once thought of burning the houses of those who used to stay away from the congregational prayers. The Messenger of Allah ﷺ remained on the observance of the congregational prayers from the time Allah legislated it until his soul ﷺ was taken by Allah.

The Messenger of Allah ﷺ did not give respite to the fellow who sought for it as regards the congregational prayer despite the fact that he was blind.

The blind man, in that incident, asked the Prophet ﷺ to allow him observe his prayers at home, he ﷺ first granted him his request but when the man turned to take his leave, he ﷺ called him and asked:

هَلْ تَسْمَعُ النِّدَاءَ.

Do you hear the call to prayer?

The man replied in the affirmative, then the Messenger of Allah ﷺ said:

فَأَجِبْ.

Then answer the call.

All we have mentioned in a short while can be found in the Sahih.

It has also come in the Sahih on the authority of Abdullah bin Masuud ﷺ that he said: 'I could recall our states at the time, none will stay away from it (the Congregational Prayers) except a well-known hypocrite. It was such that a man would be brought for it by two helpers, he would be assisted until he would be made to stand in the row.

As for the assertion that the congregational prayers could be constituted by at least two persons, there is no difference of opinion as regards that. It has been established in the Sahih in the hadith of Abdullah bin Abbas ﷺ that he once observed a prayer with the Prophet ﷺ in the night; he stood by the left hand side of the Messenger of Allah ﷺ who then moved him to his right.

As for the assertion that the rewards from the congregational prayer will increase as the number of persons that observe it increases, it has been established from Ubayy bin Kab ﷺ who said, The Messenger of Allah ﷺ said:

صَلَاةُ الرَّجُلِ مَعَ الرَّجُلِ أَزْكَى مِنْ صَلَاتِهِ وَحْدَهُ، وَصَلَاتُهُ مَعَ الرَّجُلَيْنِ أَزْكَى مِنْ صَلَاتِهِ مَعَ الرَّجُلِ وَمَا كَانَ أَكْثَرَ فَهُوَ أَحَبُّ إِلَى اللَّهِ.

A man's prayer with another man is better than his prayer alone; and his prayer with two men is better than his prayer with just a man. As the number of the congregation increases, it becomes pleasing to Allah.

Ahmad recorded the hadith so also Abu Dawud, An-Nasai, Ibn Majah and Ibn Hibban. It was held to be authentic by Ibn As-Sakan, Al-Uqayli and Al-Hakim.

As for the permissibility of observing the congregational prayer behind a less superior person, the Messenger of Allah ﷺ indeed observed a prayer behind Abu Bakr As-Sidiq ﷺ and other than him from among his companions as it has come in the Sahih. Also, because there is no proof indicating that for a congregational prayer to be acceptable, the Imam leading the prayer must be the best of all.

The Ahadith that have come on this issue are:

لَا يَؤُمَّنَّكُمْ ذُو جُرأَةٍ فِي دِينِهِ.

He that is audacious in his religion should not lead you in prayers.

This hadith and other similar ones cannot stand as proofs. Taken that they can stand as proofs, there is nothing in them except the prevention of an audacious person in his religion from being the Imam; it is therefore not a prevention of a less superior person from leading. Also, the opinion had been refuted by the Ahadith indicating that it is permissible to observe prayers behind every pious and dissolute Muslim; and behind everyone that proclaims: 'there is no deity worthy of worship except Allah, only that these narrations are weak but not weaker than the opinion they contradict.

The basis is that Prayers are acts of worship, they can be observed behind any person that observes it provided the person accomplishes its pillars and its words of remembrance in the manner that the Prayer will not go out of its acceptable form. It is permissible to do so even if the Imam is a sinner and he is not careful towards what many people are much careful about in the matters of

religion. This is why the lawgiver ﷺ has only given consideration to the good manner of recitation, knowledge, and age. He did not consider the person's devoutness or uprightness; the Messenger of Allah ﷺ says:

يَؤُمُّ الْقَوْمَ أَقْرَؤُهُمْ لِكِتَابِ اللَّهِ، فَإِنْ كَانُوا فِي الْقِرَاءَةِ سَوَاءً فَأَعْلَمُهُمْ بِالسُّنَّةِ، فَإِنْ كَانُوا فِي السُّنَّةِ سَوَاءً فَأَقْدَمُهُمْ هِجْرَةً، فَإِنْ كَانُوا فِي الْهِجْرَةِ سَوَاءً فَأَقْدَمُهُمْ سِنّاً.

Let he who is best in the recitation of the Book of Allah lead people in prayers, if they are all the same in this regard, then the best of them in the knowledge of Sunnah, and if they are as well the same in this regard, then the first amongst them to migrate (from Makkah to Madinah), if they are also the same in that regard, then the oldest amongst them.

Muslim and other collectors of hadith recorded it on the authority of Abu Masuud ﷺ.

Also in the hadith of Malik bin Al-Huwayrith ﷺ, which goes thus:

وَلْيَؤُمَّكُمَا أَكْبَرُكُمَا.

He should lead you both, the oldest among you.

It can be found in the Sahihayn and other works.

The Messenger of Allah ﷺ did appoint Ibn Umm Maktuum ﷺ to deputize in Madinah on two occasions. Ibn Umm Maktuum ﷺ would lead them in prayers while he was a blind man ﷺ.

The conclusion therefore is that the lawgiver ﷺ only considered the best person in recitation of the Qur'an and knowledge of the Sunnah. He ﷺ also gave preference to migration (from Makkah to Madinah) and age. Thus, in those specified circumstances, a less superior person cannot lead those who are most superior in prayer except with their permission, and there is no other consideration for superiority in other than what has come in the narrations.

But the statement that it is better that the noble people are made the Imam,

this is due to the hadith of Ibn Abbas ﷺ who said: The Messenger of Allah ﷺ said:

اجْعَلُوا أَئِمَّتَكُمْ خِيَارَكُمْ فَإِنَّهُمْ وَفْدُكُمْ فِيمَا بَيْنَكُمْ وَبَيْنَ رَبِّكُمْ.

Let your Imams be the best amongst you because they will indeed serve as the delegation you from to your Lord.

Al-Daraqutni ﷺ recorded it so also Al-Hakim ﷺ while discussing the biography of Marthad Al-Ganawi; who reported it from the Messenger of Allah ﷺ that he ﷺ said:

إِنْ سَرَّكُمْ أَنْ تُقْبَلَ صَلاتُكُمْ فَلْيَؤُمَّكُمْ خِيَارُكُمْ، فَإِنَّهُمْ وَفْدُكُمْ فِيمَا بَيْنَكُمْ وَبَيْنَ رَبِّكُمْ.

If it pleases you that your prayers are accepted, make the best among you your leaders in prayers, they are indeed your delegation to your Lord.

As for the assertion that men should lead women in prayers and not vice-versa, that is due to the hadith recorded on the authority of Anas bin Malik ﷺ as found in the Sahihayn and some other works, that he ﷺ and another boy aligned behind the Prophet ﷺ and behind them an old woman.

Al-Ismailiyy ﷺ recorded on the authority of 'A'ishah ﷺ that she said: 'The Prophet ﷺ was that whenever she returned from the masjid, he ﷺ would lead us in prayer.

Also, women used to form rows behind the Messenger of Allah ﷺ in his masjid.

There is no difference of opinion as to the fact that women are to pray behind men, the only area where controversy is found is the case of a man leading only women folks in prayer but whoever says such a prayer is invalid should come up with proofs.

As for the assertion that it is not right for a woman to lead men in prayer, it is because a woman is all nakedness in her nature and she is deficient intellectually and religiously. Also, because men are guardian over women and a people whom the leader of their affairs is a woman will not prosper, as all have come

in the Sahih. So, whoever lines up behind a woman in prayer has made her the controller of the affairs of his prayer.

As for the assertion that a person observing an obligatory prayer can lead a person who is observing a non-obligatory one, and the other way round, there is no difference of opinion as to the validity of the prayer of a person observing a non-obligatory prayer behind someone observing an obligatory one. And as for the other way round, the hadith of Muadh bin Jabal ﷺ indicates that; he Muadh ﷺ used to lead his people in prayers after he would have observed same prayer behind the Messenger of Allah ﷺ. The narration can be found in the Sahihayn and other works of hadith.

As for the prayer of a person observing a non-obligatory prayer behind a person observing such, the proof for that is what the Messenger of Allah ﷺ once did in his night prayer wherein Ibn Abbas ﷺ prayed with him. So also was his prayer ﷺ with Anas ﷺ, the orphan and the old woman, among other proofs. Each of those is established in the Sahih.

As for the assertion that it is obligatory to follow the Imam in all acts other than those acts that can nullify the prayer, that is due to this hadith:

إِنَّمَا جُعِلَ الإِمَامُ لِيُؤْتَمَّ بِهِ ، فَلاَ تَخْتَلِفُوا عَلَيْهِ.

The Imam has been made as someone to be followed in prayers, therefore do not contradict him.

The hadith is authentic as found in the Sahih; it was recorded on the authority of Abu Hurairah, Anas, and Jabir ﷺ. It is also authentic in other than Sahih Collection on the authority of a number of Companions of the Messenger of Allah ﷺ. There is a threat as regards doing otherwise, an example of that is the hadith of Abu Hurairah ﷺ who said the Messenger of Allah ﷺ said:

أَمَا يَخْشَى أَحَدُكُمْ إِذَارَفَعَ رَأْسَهُ قَبْلَ الإِمَامِ أَنْ يُحَوِّلَ اللَّهُ رَأْسَهُ رَأْسَ حِمَارٍ أَوْ يُحَوِّلَ صُورَتَهُ صُورَةَ حِمَارٍ.

Is he who raises his head before the Imam not afraid that Allah transforms his head to that of a donkey or transforms him completely into a donkey.

It is recorded by the Six Collectors [i.e. Al-Bukhari, Muslim, Abu Dawud, At-Tirmidhi, An-Nasai, and Ibn Majah].

The person observing the prayer should not follow the Imam in what will nullify his prayer, like if the Imam talks or carries out acts that make him look like someone engaging in other than the prayer; there is no difference of opinion regarding that.

As for the assertion that a person should not lead a people who hated him, the proof for that is the hadith of Abdullah ibn Amr (ﷺ) that the Messenger of Allah (ﷺ) used to say:

ثَلاَثَةٌ لاَ يَقْبَلُ اللَّهُ مِنْهُمْ صَلاَةً مَنْ تَقَدَّم قَوْمًا وَهُمْ لَهُ كَارِهُونَ، وَرَجُلٌ أَتَى الصَّلاَةَ دِبَارًا، وَرَجُلٌ اعْتَبَدَ مُحَرَّرَهُ

Allah will not accept the prayers of three categories of people: He that leads a people who hated him, a person who comes to prayer after it has been observed (deliberately not to follow the Imam, or being that his attitude, or after its time has elapsed, or at the later time of the prayer without any tenable excuse) and a person that enslaves a free person.

Recorded by Abu Dawud and Ibn Majah; there is AbdurRahman bin Ziyad bin Anum Al-Ifriqiyy in the chain of the hadith above; this AbdurRahman has some weakness (in him as a reporter of hadith).

At-Tirmidhi also recorded on the authority of Abu Umamah who said the Messenger of Allah (ﷺ) said:

ثَلاَثَةٌ لَا تُجَاوِزُ صَلَاتُهُمْ آذَانَهُمْ: الْعَبْدُ الْآبِقُ حَتَّى يَرْجِعَ وَامْرَأَةٌ بَاتَتْ وَزَوْجُهَا عَلَيْهَا سَاخِطٌ وَإِمَامُ قَوْمٍ وَهُمْ لَهُ كَارِهُونَ.

Three categories of persons, their prayers will not go beyond their ears: A slave that flees from his master until he goes back to him, a woman who goes to sleep while her husband is angry with her, and a person who leads a people who hate him in prayer.

At-Tirmidhi held the narration as hasan but Al-Baihaqi regarded it as being weak.

Al-Imam Al-Nawawi ﷺ said in Al-Khulaasah: What is more reliable is the statement of At-Tirmidhi, (that the narration is hasan).

There are several other Ahadith over the topic from a group of Companions; the narrations strengthen one another.

As for the assertion that the Imam will use the prayer of the weakest of the people (in the congregation) as the standard for the prayer, that is due to what has come in the Sahihayn and some other works on the authority of Abu Hurairah ﷺ. He reported that the Messenger of Allah ﷺ said:

إِذَا صَلَّى أَحَدُكُمْ بِالنَّاسِ فَلْيُخَفِّفْ فَإِنَّ فِيهِمْ الضَّعِيفَ وَالسَّقِيمَ وَالْكَبِيرَ فَإِذَا صَلَّى أَحَدُكُمْ لِنَفْسِهِ فَلْيُطَوِّلْ مَا شَاءَ.

When any of you leads people in prayer, let him shortens it because there are weak, sick and aged people among them. But when he prays alone, let him prolong it as he might want.

Several authentic Ahadith have come on the issue of lessening the length of the prayers.

As for the assertion that it is the Sultan (the ruler) that should lead the prayer, or the owner of a house in his house, that is due to the proof that has come in the Sahihayn on the authority of Abu Masuud, Uqbah bin Amr ﷺ. The hadith is traceable to the Messenger of Allah, he ﷺ said:

لا يَؤُمَّنَّ الرَّجُلُ الرَّجُلَ فِي سُلطَانِهِ.

No man should lead another man in his territory.

In a version, it reads:

لا يَؤُمَّنَّ الرَّجُلُ الرَّجُلَ فِي أَهلِهِ ولا سُلطانِهِ

No man should lead another in his house or territory.

A narration allows this act but with the condition that the person who has the authority gives his permission.

The version of Abu Dawud reads:

لا يؤمُّ الرَّجُلُ فِي بَيْتِهِ.

No man should lead in another man's house.

Ahmad also recorded the hadith, so also Abu Dawud, At-Tirmidhi and An-Nasai, on the authority of Malik bin Al-Huwayrith who said: I heard the Messenger of Allah ﷺ said:

مَنْ زَارَ قَوْمًا فَلاَ يَؤُمَّهُمْ وَلْيَؤُمَّهُمْ رَجُلٌ مِنْهُمْ.

Whoever visits a people should not lead them in prayer; rather one of the people should lead the prayer.

As for the preference for an Imam that is best in the recitation of the Qur'an, followed by the most knowledgeable of them, then the oldest, the proof for that is what has been recorded on the authority of Abu Masuud رضي الله عنه in this version

يَؤُمُّ الْقَوْمَ أَقْرَؤُهُمْ لِكِتَابِ اللَّهِ فَإِنْ كَانُوا فِي الْقِرَاءَةِ سَوَاءً فَأَعْلَمُهُمْ بِالسُّنَّةِ فَإِنْ كَانُوا فِي السُّنَّةِ سَوَاءً فَأَقْدَمُهُمْ هِجْرَةً فَإِنْ كَانُوا فِي الْهِجْرَةِ سَوَاءً فَأَقْدَمُهُمْ سِناً.

Let he who is best in the recitation of the Book of Allah lead people in prayers, if they are all the same in this regard, then the best of them in the knowledge of Sunnah, and if they are as well the same in this regard, then the first amongst them to migrate (from Makkah to Madinah), if they are also the same in that regard, then the oldest amongst them.

The hadith is in the Sahihayn. We did not mention the issue of 'migration'

in the summary works (Al-Mukhtasar) because there is no migration (from Makkah) any more after the Conquest of Makkah as it has come in the Sahih.

As for the assertion that when the prayer of the Imam becomes faulty, the Imam will be held responsible not the people praying behind him, that is due to the hadith of Abu Hurairah ﷺ who said the Messenger of Allah ﷺ said:

يُصَلُّونَ بِكُمْ فَإِنْ أَصَابُوا فَلَكُمْ وَلَهُمْ وَإِنْ أَخْطَئُوا فَلَكُمْ وَعَلَيْهِمْ.

They (your leaders) lead in you in prayers, if they observe it rightly, it is to your advantage and theirs as well, but if they make mistakes, it is counted against them and not you.

Al-Bukhari recorded as well as some other collectors of hadith.

Ibn Majah recorded, on the authority of Sahl bin Sad ﷺ, the like of the hadith above.

As for the assertion that the people would form rows behind the Imam except if it is just one person with the Imam, who will then have to stay on his right hand side, the proof for that is the hadith of Jabir bin Abdillah ﷺ who said he once observed a prayer with the Prophet ﷺ and that the Messenger of Allah ﷺ put him by his right hand side. Then another fellow arrived and stood by the left hand side of the Messenger of Allah ﷺ, then the Messenger of Allah ﷺ held the hands of the two of them and aligned them at his back until he ﷺ made them stand behind him.

The hadith is in the Sahih. That was what the Messenger of Allah ﷺ and his Companions used to do regarding congregational prayer whereby a person would stand by the right hand side of the Imam; and from two persons upwards, at the back of the Imam. The majority of the scholars have opined the obligation of that. Said bin Al-Musayyib ﷺ have the opinion that the act is only desirable. It was also reported from An-Nakhai ﷺ that one person can stay behind the Imam.

As for the assertion that a woman leading other women in prayer will stand in their middle, the proof for that is what has been reported from the act of 'A'ishah ﷺ she once led some women in prayer and she stood in the middle of the row. The report was recorded by Abdul Razzaq, Al-Daraqutni, Al-Baihaqi, Ibn Abi Shaybah, and Al-Hakim. The line of that was also reported from Umm Salamah ﷺ; that was recorded by Al-Shafi'i ﷺ, Ibn Abi Shaybah, Abdul Razzaq and Al-Daraqutni.

As for the assertion that men's rows comes first then the rows of the young ones, and then that of the women. The proof for that is the hadith of Abu Malik Al-Ashari ﷺ that the Prophet ﷺ used to make men be in the front rows, then the rows of the youngsters, and then the rows of women.

Ahmad recorded it. Abu Dawud also recorded a part of it. There is Shahr bin Hawshab (a somewhat weak narrator) in the narration, but what is contained in the Sahihayn strengthens the opinion. The hadith that is recorded on the authority of Anas bin Malik ﷺ that he and an orphan boy formed a row behind the Messenger of Allah ﷺ while Umm Sulaym ﷺ was behind all of them.

As for the assertion that the person more entitled to the first row are the people of intellect and understanding, the proof for that is the hadith of Abu Masuud Al-Ansari ﷺ that is established in the Sahih that the Prophet ﷺ said:

لِيَلِنِي مِنْكُمْ أُولُو الأَحْلاَمِ وَالنُّهَى، ثُمَّ الَّذِينَ يَلُونَهُمْ، ثُمَّ الَّذِينَ يَلُونَهُمْ.

Let the people of intellect and understanding among you occupy the row behind me, then those who follow them (in excellence), then those who follow them, then those who follow them.

Ahmad recorded another hadith from him, so also Ibn Majah, At-Tirmidhi and An-Nasai, he said: the Messenger of Allah ﷺ used to love that the Muhajirun and the Ansar stay close to him in prayers so that they would be able to take (knowledge) from him ﷺ.

As for the assertion that it is obligatory upon the congregation to align their rows well and that they should block all gaps, the proof for that is what Abu Dawud recorded on the authority of Abu Hurairah ﷺ who said the Messenger of Allah ﷺ said:

وَسِّطُوا الإِمَامَ ، وَسُدُّوا الخَلَلَ.

Align yourselves such that the Imam is at the middle and block all gaps.'

So also in the Sahihayn, on the authority of Anas bin Malik ﷺ that the Messenger of Allah ﷺ said:

سَوُّوا صُفُوفَكُمْ فَإِنَّ تَسْوِيَةَ الصَّفِّ مِنْ تَمَامِ الصَّلاَةِ

Align your rows properly; indeed alignment of rows is part of the completion of the prayer.

Also on the authority of Anas bin Malik ﷺ, as it has come in the Sahihayn, that the Messenger of Allah ﷺ would face us before he would raise his hand to say Allahu Akbar and would say:

تَرَاصُّوا وَاعْتَدِلُوا

Stand well in your rows and be upright.

It has come authentically in the Sahih, on the authority of An-Numan bin Bashir, that the Messenger of Allah ﷺ said:

عِبَادَ اللَّهِ لَتُسَوُّنَّ صُفُوفَكُمْ ، أَوْ لَيُخَالِفَنَّ اللَّهُ بَيْنَ وُجُوهِكُمْ.

O slaves of Allah! You either align your rows well, lest Allah diverges your faces from one another.

As for the assertion that the first row has to be completely occupied before the second, and others follow in that order the proof for that are the several authentic Ahadith indicating the command of the Messenger of Allah regarding completing the alignment of the first row, then the one that follows it and so on.

The Sunnah regarding the Prayer is that a person praying behind the Imam should not go to the second row while there is a space in the first row. So also he should not stand in the third row while there is a space in the second row and so on. There is also a report that says that standing on the right hand side of the Imam is desirable and better.

باب سُجُود السَّهْو

Chapter 2.9 Prostration of Forgetfulness

Sujuud-Sahw [Prostration of Forgetfulness] is made up of two prostrations before the Tasleem [salutation] or after it, with the saying of Allahu Akbar, the Tashahhud, and freeing of oneself (from the Prayer by saying the salutation). It is made lawful for he that forgets any Sunnah of the prayer, or one who adds to the prayer, even if it were a unit, added out of forgetfulness; also for a doubt in the number of units of prayer one has observed. When the Imam goes for the prostration the person praying behind him must follow him.

Explanation:

As for the assertion that prostration of forgetfulness can be according to one's choice – either before the salutation or after it, the proof for that is what has come authentically from the Messenger of Allah ﷺ that he made the prostration of forgetfulness before the salutation. It is also authentically reported from him ﷺ that he made the prostration after the salutation.

The hadith that came authentically from him indicating that he ﷺ made the prostration before the salutation is the hadith recorded by Ahmad, Ibn Majah and At-Tirmidhi on the authority of AbdurRahman bin Awf رضي الله عنه, held to be authentic by At-Tirmidhi, that the Messenger of Allah ﷺ said:

إِذَا شَكَّ أَحَدُكُمْ فِي صَلَاتِهِ فَلَمْ يَدْرِ أَوَاحِدَةً صَلَّى أَمْ ثِنْتَيْنِ فَلْيَجْعَلْهَا وَاحِدَةً وَإِذَا لَمْ يَدْرِ ثِنْتَيْنِ صَلَّى أَمْ ثَلَاثًا فَلْيَجْعَلْهَا ثِنْتَيْنِ وَإِذَا لَمْ يَدْرِ ثَلَاثًا صَلَّى أَمْ أَرْبَعًا فَلْيَجْعَلْهَا ثَلَاثًا ثُمَّ يَسْجُد إِذَا فَرَغَ مِنْ صَلَاتِهِ وَهُوَ جَالِسٌ قَبْلَ أَنْ يُسَلِّمَ سَجْدَتَيْنِ.

When any of you becomes doubtful in his prayer such that he does not know whether he had observed just a unit or two, let him make it one. If he does not know whether he had observed two or three, let him make it two; when he does not know whether he had observed three or four, let him make it three, then he should make two prostrations while sitting, after he might have finished his prayer before he performs the salutation.

There are several other Ahadith under the topic, among which are those that have come in the Sahih, an example of which is the hadith of Abu Sa'id Al-Khudri ﷺ who said: The Messenger of Allah ﷺ said:

إِذَا شَكَّ أَحَدُكُمْ فِي صَلَاتِهِ فَلَمْ يَدْرِ كَمْ صَلَّى ثَلَاثًا أَمْ أَرْبَعًا فَلْيَطْرَحْ الشَّكَّ جَانباً وَلْيَبْنِ عَلَى مَا اسْتَيْقَنَ ثُمَّ يَسْجُدُ سَجْدَتَيْنِ قَبْلَ أَنْ يُسَلِّمَ

When any of you becomes doubtful in his prayer such that he does not know whether he had observed three or four units, let him however cast away the doubt and base the prayer upon that which is certain, he should then perform two prostrations before he says the salutation.

There are also some other Ahadith that have come in other than the Sahihayn.

As for the hadith that has come authentically from him ﷺ indicating that he ﷺ performed the prostration after he said the salutation, among such is the hadith of 'the fellow having long hands' that is found in the Sahihayn. Therein, the Messenger of Allah ﷺ performed the prostration after he had said the salutation.

Hadith of Ibn Mas'ud ﷺ that is in the Sahihayn and other works, linked to the Messenger of Allah ﷺ, in this version:

إِذَا شَكَّ أَحَدُكُمْ فِي صَلَاتِهِ فَلْيَتَحَرَّ الصَّوَابَ وَلْيُتِمَّ عَلَيْهِ ثُمَّ لِيُسَلِّمْ ثُمَّ يَسْجُدُ سَجْدَتَيْنِ.

When any of you becomes doubtful in his prayer, he should strive to know that which is correct, he should then complete his prayer based on that, and thereafter make two prostrations after the salutation.

So also is the hadith of Al-Mugirah bin Shubah ﷺ that he led some people in prayer and forgot the Middle Tashahhud in the process, when he finished his prayer, he said the salutation then made two prostrations and made another salutation. After that he (Al-Mughirah ﷺ) said, This is how the Messenger of Allah ﷺ did for us.

Ahmad and At-Tirmidhi recorded it; the latter authenticated it.

So also is the hadith of Ibn Mas'ud ﷺ that is contained in the Sahihayn and other works that the Prophet ﷺ observed the Noon Prayer as five units once,

it was said to him: Has there been an addition to the prayer? He ﷺ replied: No, and what is it that necessitated the question?" They replied: 'You observed five units of prayer'. The Messenger of Allah ﷺ then made two prostrations after he had made the salutation.

All these narrations state clearly that the prostration can sometimes be before the salutation and it can be after; they indicate that both are permissible. However, it is necessary that the lawgiver ﷺ is followed in the cases narrations have indicated, such that the prostration is done before the salutation where he ﷺ did the prostration before the salutation, and done after the salutation where he did it after salutation. While other cases are done according to individual's choice; all being the Practice of the Messenger of Allah ﷺ. There are different schools of thought over the matter; I have explained all in Sharh Al-Muntaqaa.

As for the assertion that prostration of forgetfulness is with the saying of Allahu Akbar, the Tashahhud and saying the salutation; it has come authentically from him ﷺ that he said Allahu Akbar and as well did salutation as reported in the hadith of 'the fellow having long hands'; a hadith that is established in the Sahih. There are also several other Ahadith concerning the issue.

As for saying the Tashahhud, it is derived from the hadith of Imran bin Husayn ﷺ. He reported that the Prophet ﷺ led them in a prayer and forgot an act in the course of the prayer, he ﷺ thereafter made two prostrations then said the Tashahhud after which he made the salutation.

Abu Dawud recorded it so also At-Tirmidhi; Ibn Hibban authenticated it, so also Al-Hakim who said that it is authentic upon the criteria of the two Imams – Al-Bukhari and Muslim. The like of the hadith has been reported from Al-Mughirah, Ibn Mas'ud, and 'A'ishah ﷺ.

As for the assertion that the prostration of forgetfulness is legislated for omitting the Sunnah aspects of the prayer, the basis for that is the Prophet's prostration when he forgot the Middle Tashahhud, and based on this hadith:

لِكُلِّ سَهْوٍ سَجْدَتَانِ.

For every act of forgetfulness (in prayers) there are two prostrations (to rectify it).

What has been said by scholars over the hadith above is well-known.

There are other Ahadith on the matter. It is done when the person observing

a prayer omitted any Sunnah of the prayer out of forgetfulness because it has come authentically from him ﷺ that the prostration of forgetfulness is meant to spite the devil, as it has also come in the hadith of Abu Sa'id in the Sahih. And there is no spiting to the Shaytan except with forgetfulness because he (the Shaytan), but what is deliberately left by the person observing the prayer is regarded as his own act not that of Shaytan; he therefore loses the reward for it.

As for the assertion that prostration of forgetfulness can be used to rectify additional acts in the prayers even if it were a complete unit added out of forgetfulness, the proof for that is the hadith that was earlier mentioned. As for any act shorter than a unit of the prayer, it is safer that the prostration is carried out as well. As for a doubt in the number of units, there are Ahadith that were earlier mentioned stating that whoever falls into a doubt as regards the number of units his observes should strive to know what is certain then make the prostration for forgetfulness.

As for the assertion that the person praying behind the Imam will follow him when performing the prostration of forgetfulness, the basis for that is the fact that doing it is part of completing the prayer with him, and due to the fact that the Companions ﷺ used to make the prostration with the Messenger of Allah ﷺ whenever he did it. There is a command as to doing what the Imam does in prayer; that has earlier been mentioned.

باب القَضَاء للفَوائِت

Chapter 2.10 Making up the Missed Prayers



If a prayer is left deliberately not for any just cause, that is Allah's debt worthier of being repaid, but if there is a cause, then it will not be regarded as repayment rather an action that must be brought forth whenever the excuse ceases to exist, except the Eid prayer, which has to be established the second day.

Explanation:

I say: The people of knowledge disagree as to repayment of prayers that one misses – not out of an excuse. The majority of the scholars are of the view that any prayer that is missed must be repaid. Dawud the literalist, Ibn Hazm and some people of the Shaafi School-of-thouhgt are of the view that there is no repayment for any prayer intentionally missed, if with no excuse. The author of Al-Bahr says that is the opinion of the two sons of Al-Haadi; so also it is said it is the opinion of Al-Ustadh. There is a report from Al-Qasim that says that is his own view too, so also from An-Nasir. They say whoever intentionally misses a prayer has suffered an inequity for missing that prayer. That is also the opinion of Shaykhul-Islam Taqiyuddin ibn Taymiyyah ﴿رحمه الله﴾.

The majority of the scholars do not come up with proof indicating that it must be repaid, and I am not aware of any proof in the Book and the Sunnah saying that, except a narration from a woman of Al-Khuthami Tribe whom the Messenger of Allah ﴿ﷺ﴾ told that:

فَدَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى

It is Allah's debt that is worthier of being repaid.

The hadith is authentic in Sahih Al-Bukhari.

The hadith contains a general statement implied by the attributive use of the phrase Allah's debt, that includes what is being discussed in this chapter. That is the only.

Proof the scholars saying the prayer must be repaid rely on.

Meanwhile, they do not hold this only proof the same way; there is a difference of opinions among the scholars as to whether in a case of repayment, it suffices to have an indication of the obligation of repayment, or that there must be an establishment that a debt should be paid? The truth however is that there must be a new indicator or an establishment because the general command to repay debts is independent of responsibility of repayment (which needs to be established).

The difference among the scholars actually occurred as regards a prayer that is intentionally left without a cause.

But if there is a cause for leaving a prayer, such as sleeping, forgetfulness, or being busy at war while there is no room for observing the prayer of fear, and when there is exchange of swords (between someone and the enemy). It is then obligatory that such a prayer be observed when the excuse is no more, the time it will be performed will be regarded as its time, and carrying it out then will be seen as bringing forth a missed act as many Ahadith have pointed out.

مَنْ نَامَ عَنْ صَلاتِهِ أَوْ سَهَا عَنْهَا فَوَقْتُهَا حِينَ يَذْكُرُهَا

Whoever sleeps off a prayer or forgets it, its time is when he remembers it.

That has earlier come in the first part of the Chapter of Prayers.

However, there is a difference of opinions regarding that. However, the truth is that the time he wakes up or remembers it is its time. The time will not be regarded as the time of repayment due to what has clearly come from the Messenger of Allah ﷺ that the time for a prayer that is forgotten, or one that its time is slept off is the time the person remembers.

As for a prayer left for a reason other than sleeping or forgetfulness, like someone in the war front, the Messenger of Allah ﷺ and his Companions رضي الله عنهم were prevented from observing Zhuhr and Asr Prayers at their respective times by the enemy on the day of Battle of Trench. They could not observe the prayers until after a part of the night has set-in as was recorded by Ahmad and An-Nasai on the authority of Abu Sa'id Al-Khudri. The hadith is also contained in the Sahihayn, as recorded on the authority of Jabir bin Abdillah رضي الله عنه, though there is no mention of the Noon Prayer in that hadith; only Asr Prayer was mentioned.

As for the assertion that if Eid prayer is missed due to loss of count, that it will

be observed the following day and that it cannot be observed on that day if its time has lapsed. The proof for that is the hadith of Umayr bin Anas ﷺ who reported from his uncle that their visions were impaired by cloud and were unable to sight the crescent; they continued fasting until some strange riders arrived later in the day. They testified in the presence of the Messenger of Allah ﷺ that they saw the crescent the day before, the Prophet ﷺ then ordered the people to break their fast (being the last day of fasting) and that they should come out for their Eid the following day. Ahmad, Abu Dawud, An-Nasai, Ibn Majah, and Ibn Hibban recorded the hadith; Ibn Hibban recorded it in his Sahih. Ibn Al-Mundhir held it to be authentic so also Ibn As-Sakan, Ibn Hazm, Al-Khattabi and Ibn Hajar in Buluugh al-Maraam.

باب صلاة الجُمُعَة

Chapter 2.11 Jumu'ah Prayer



Jumu'ah Prayer is obligatory on every morally responsible person except the women, slaves, travellers and the sick ones. It is like the rest of the prayers; it does not differ from other prayers except in the legality of having two sermons before it. The time for Jumu'ah Prayer is the time for Zhuhr Prayer. It is for anybody that comes for it that he should not walk past the necks of the people, and that he should remain silent in the course of the two sermons. It is good that one goes to Jumu'ah at the earlier time, and that one applies perfume, beautifies oneself and sits near the Imam. Whoever meets a unit therein has indeed met the prayer. Jumu'ah Prayer is optional on the day of Eid

Explanation:

I say: Jumu'ah Prayer is one of the obligatory acts Allah, the Glorified, has legislated as laws. The Book of Allah is unequivocal on that, so also what has authentically come from the Pure Sunnah; like the hadith that the Messenger of Allah ﷺ once thought of burning the dwelling of those who used to stay away from it. The hadith can be found in the Sahih on the authority of Abdullah bin Masuud, and the like of the hadith of Abu Hurairah رضي الله عنه that the Messenger of Allah ﷺ said:

لَيَنْتَهِيَنَّ أَقْوَامٌ عَنْ وَدْعِهِمْ الْجُمُعَاتِ أَوْ لَيَخْتِمَنَّ اللَّهُ عَلَى قُلُوبِهِمْ ثُمَّ لَيَكُونُنَّ مِنْ الْغَافِلِينَ

The people should cease from their abandonment of Jumu'ah Prayers lest Allah will seal their hearts and they will surely become among the heedless ones.

Muslim recorded the hadith; and some other collectors.

On the issue is the hadith of Hafsah رضي الله عنها traceable to Messenger of Allah ﷺ that he ﷺ said:

رَوَاحُ الْجُمُعَةِ وَاجِبٌ عَلَى كُلِّ مُحْتَلِمٍ

Leaving for Jumu'ah Prayer is obligatory on every grown-up person.

An-Nasai recorded the hadith with an authentic chain.

So also is the hadith of Taariq bin Shihab ﷺ that goes thus:

الْجُمُعَةُ حَقٌّ وَاجِبٌ عَلَى كُلِّ مُسْلِمٍ

Jumu'ah Prayer is rightfully obligatory on every Muslim.

Abu Dawud recorded it. It will soon come.

The Messenger of Allah ﷺ remained on its observance; that was since the time Allah the Almighty legislated it till He took his soul ﷺ.

Ibn Al-Mundhir ﷺ says there is a consensus over its being obligatory on every Muslim. Ibn Al-Arabiyy ﷺ said: Jumu'ah Prayer is obligatory according to the consensus of all the scholars. Ibn Al-Qudamah ﷺ says in Al-Mughnee: Scholars of Islam agree on the obligation of Jumu'ah Prayer; they only disagree as to its being obligatory on every Muslim or whether it is a communal obligation.

Thus whoever denies the obligation of the Jumu'ah Prayer has indeed made a mistake and is not correct.

As for the assertion that it is not obligatory on the women, the slaves, the travellers and the sick ones, the proof for that is the hadith:

الْجُمُعَةُ حَقٌّ وَاجِبٌ عَلَى كُلِّ مُسْلِمٍ فِي جَمَاعَةٍ إِلَّا أَرْبَعَةً عَبْدٌ مَمْلُوكٌ أَوْ امْرَأَةٌ أَوْ صَبِيٌّ أَوْ مَرِيضٌ

The Jumu'ah prayer is obligatory on every Muslim in the congregation except four groups of people: A slave or a woman or a young one or the sick person.

Abu Dawud recorded the hadith on the authority of Taariq bin Shihab ﷺ from the Messenger of Allah ﷺ. Al-Hakim also recorded it on the authority of Taariq ﷺ who in turn reported it from Abu Musa ﷺ. Al-Haafidh Ibn Hajr said more than a scholar of hadith authenticated it.

There is a mention of travellers in the hadith of Abu Hurairah and Jabir bin Abdillah ﷺ. Both hadiths are well-known. What is known is that the traveller cannot hear the call to prayer, and it has come that the Jumu'ah Prayer is obligatory on whoever hears the call to prayer as it has come in the hadith of Ibn Amr ﷺ as found with Abu Dawud.

As for the assertion that the Jumu'ah Prayer is like the rest of the prayers; that it does not differ from other prayers except in the legality of the sermon it contains, which comes before it. The assertion is due to the fact that there is no proof that indicates that the Jumu'ah Prayer differ from the other prayers in other than the issue of the sermon.

Thus this conclusion indicates the rejection of the view that it is part of the criteria of the obligation of the Jumu'ah Prayer that: it must be lead by a Grand Ruler (administering a country), done a town that brings the people together, and that there must be a specific number of people before it can be constituted. There is no proof indicating the desirability of these conditions let alone proofs indicating their obligation or proofs indicating their being conditions that must be met.

Therefore, if two persons observe the Jumu'ah Prayer in a place where there is no other Jumu'ah Prayer, such have indeed rendered what is obligatory upon them. If one of them gives the sermon, they have both carried out the Sunnah; and if they were to leave the sermon, there is nothing against them since the sermon is just a desirable act[8] of the Jumu'ah Prayer.

If not the hadith of Taariq bin Shihab ﷺ, that was mentioned shortly, that says the Jumu'ah prayer is obligatory upon every Muslim to be observed in congregation, and because the Messenger of Allah ﷺ never performed it alone, it could have been said that the Jumu'ah Prayer can be performed singly like other prayers.

As for the assertion that the time to observe the Jumu'ah prayer is the same as the time the Zhuhr Prayer is observed, this is due to the fact that the Jumu'ah Prayer comes to replace the Zhuhr Prayer. However, there are proofs which indicate that the Jumu'ah Prayer can be observed before the sun reaches the zenith. Such as the hadith of Anas bin Malik ﷺ that the Messenger of Allah ﷺ would sometimes observe the Jumu'ah Prayer and the Companions ﷺ

8 In As-Sayhl Al-Jarraah (vol 1/298), the author is of the opinion that Khutbah of Jumu'ah Prayer is obligatory; and this is the superior view.

would go back to their dwellings to have the pre-noon siesta. The hadith can be found in the Sahih.

There is a similar narration to the above; the hadith is recorded on the authority of Sahl bin Sad and found in the Sahihayn.

So also the hadith that has come in the Sahih on the authority of Jabir bin Abdullah ﴿ﷺ﴾ that the Messenger of Allah ﴿ﷺ﴾ would observe the Jumu'ah Prayer and the Companions ﴿ﷺ﴾ would go back to their camels and made them have their rest as the sun reached the zenith.

These narrations clearly indicate that the Messenger of Allah ﴿ﷺ﴾ observed the Jumu'ah Prayer before the sun reached the zenith. That is the view of Al-Imam Ahmad bin Hanbal ﴿ﷺ﴾; and that is the truth.

The majority of the scholars are however of the view that the time for Jumu'ah Prayer is the first part of the time for Zhuhr Prayer.

As for the assertion that whoever comes to Jumu'ah Prayer should not to shove people aside in order to have his way, the proof for that is the hadith of Abdullah bin Busr ﴿ﷺ﴾. He said that a man came walking over people's necks (on the day of Jumu'ah) while the Messenger of Allah ﴿ﷺ﴾ was giving the sermon, then the Messenger of Allah ﴿ﷺ﴾ said to the man:

اجْلِسْ فَقَدْ آذَيْتَ

Sit down; you have indeed hurt (others).

The hadith was recorded by Ahmad, Abu Dawud and An-Nasai; Ibn Khuzaymah authenticated it and some others.

Another is the hadith of Arqam bin Abu Al-Arqam Al-Makhzumi ﴿ﷺ﴾ that the Messenger of Allah ﴿ﷺ﴾ said:

الَّذِي يَتَخَطَّى رِقَابَ النَّاسِ يَوْمَ الْجُمُعَةِ وَيُفَرِّقُ بَيْنَ الِاثْنَيْنِ بَعْدَ خُرُوجِ الْإِمَامِ كَالْجَارِّ قُصْبَهُ فِي النَّارِ

Indeed the person that walks over the neck of the people on the day of Jumu'ah,

separating two persons seated together, after the Imam has come out (for the sermon) is like someone dragging his intestines in the fire.

Ahmad recorded the hadith so also At-Tabarani in Al-Kabir; there is a problem with the chain of the hadith.

There are several other Ahadith on the topic such as the one that came from Muadh bin Anas ﷺ and found with At-Tirmidhi and Ibn Majah where he ﷺ said that the Messenger of Allah ﷺ said:

مَنْ تَخَطَّى رِقَابَ النَّاسِ يَوْمَ الْجُمُعَةِ اتُّخِذَ جِسْراً إِلى جَهَنم

Whoever walks past the people's necks on the day of Jumu'ah is as if he takes a bridge to the hell.

There is also one from Uthman and Anas ﷺ.

As for the assertion that one should remain silent in the course of the sermons, the proof for that is the hadith of Abu Hurairah ﷺ that the Messenger of Allah ﷺ said:

إِذَا قُلْتَ لِصَاحِبِكَ يَوْمَ الْجُمُعَةِ أَنْصِتْ وَالْإِمَامُ يَخْطُبُ فَقَدْ لَغَوْتَ

When you say to your fellow, 'Keep quiet,' on the day of Jumu'ah while the Imam gives the sermon, you have indeed made a foul speech.

The hadith is in the Sahihayn and others.

Ahmad and Abu Dawud also recorded on the authority of Ali bin Abi Talib ﷺ that he ﷺ said:

مَنْ دَنَا مِنْ الْإِمَامِ فَلَغَا وَلَمْ يَسْتَمِعْ وَلَمْ يُنْصِتْ كَانَ عَلَيْهِ كِفْلٌ مِنْ الْوِزْرِ وَمَنْ قَالَ صَهْ فَقَدْ لَغَا وَمَنْ لَغَا فَلَا جُمُعَةَ لَهُ

Whoever comes closer to the Imam and then makes a foul speech, and neither

listens nor remains silent; he has upon him a burden of inequities; but whoever says: Keep quiet (to a friend) has made a foul speech and whoever makes a foul speech has no Jumu'ah.

After saying that, Ali bin Abi Talib said ﷺ:

This is how I heard it from your Prophet ﷺ.

There is an unknown person in the chain of the hadith above.

Also under the topic, there are several other Ahadith from a number of Companions of the Messenger of Allah ﷺ.

As for the assertion that it is desirable that one goes early to Jumu'ah, the proof for that is the hadith of Abu Hurairah ﷺ as found in the Sahihayn and other works that the Messenger of Allah ﷺ said:

مَنِ اغْتَسَلَ يَوْمَ الْجُمُعَةِ غُسْلَ الْجَنَابَةِ ثُمَّ رَاحَ فَكَأَنَّمَا قَرَّبَ بَدَنَةً وَمَنْ رَاحَ فِي السَّاعَةِ الثَّانِيَةِ فَكَأَنَّمَا قَرَّبَ بَقَرَةً وَمَنْ رَاحَ فِي السَّاعَةِ الثَّالِثَةِ فَكَأَنَّمَا قَرَّبَ كَبْشًا أَقْرَنَ وَمَنْ رَاحَ فِي السَّاعَةِ الرَّابِعَةِ فَكَأَنَّمَا قَرَّبَ دَجَاجَةً وَمَنْ رَاحَ فِي السَّاعَةِ الْخَامِسَةِ فَكَأَنَّمَا قَرَّبَ بَيْضَةً فَإِذَا خَرَجَ الْإِمَامُ حَضَرَتِ الْمَلَائِكَةُ يَسْتَمِعُونَ الذِّكْرَ

Whoever performs the ritual bath on the day of Jumu'ah then takes his leave for masjid, it will be as if he makes a sacrifice of a camel, and whoever goes in the second hour, it will be as if he makes a sacrifice of a cow, and whoever goes the third hour, it will be as if he makes a sacrifice of a ram, and whoever goes the fourth hour, it will be as if he makes a sacrifice of a hen, and whoever goes the fifth hour, it will be as if he makes a sacrifice of an egg. When the Imam however comes out (to deliver the sermon), the angels too will arrive to listen to the sermon.

There are other Ahadith under the section talking about the permissibility of coming early to Jumu'ah.

As for the permissibility of wearing perfume and beautifying oneself for the Jumu'ah Prayer, the proof for that is the hadith of Abu Sa'id ﷺ from the Messenger of Allah ﷺ who said:

عَلَى كُلِّ مُسْلِمٍ الْغُسْلُ يَوْمَ الْجُمُعَةِ وَيَلْبَسُ مِنْ صَالِحِ ثِيَابِهِ وَإِنْ كَانَ لَهُ طِيبٌ مَسَّ مِنْهُ

It is a duty upon every Muslim that he takes a bath on the day of Jumu'ah and that he puts on one of his best apparel, and if he has perfume he should wear some.

Ahmad and Abu Dawud recorded it.

The hadith can also be found in the Sahihayn in this version:

الْغُسْلُ يَوْمَ الْجُمُعَةِ وَاجِبٌ عَلَى كُلِّ مُحْتَلِمٍ وَأَنْ يَسْتَنَّ وَأَنْ يَمَسَّ طِيبًا إِنْ وَجَدَ

Taking a bath on the day of Jumu'ah is an obligation upon every grown-up person (who is a Muslim), and that he should brush his teeth and wear some perfume if he finds.

Ahmad, Al-Bukhari and others also recorded on the authority of Salman Al-Farisi ﴿رضي الله عنه﴾ who said, the Messenger of Allah ﴿ﷺ﴾ said:

لا يَغْتَسِلُ رَجُلٌ يَوْمَ الْجُمُعَةِ وَيَتَطَهَّرُ مَا اسْتَطَاعَ مِنْ طُهْرٍ وَيَدَّهِنُ مِنْ دُهْنِهِ أَوْ يَمَسُّ مِنْ طِيبِ بَيْتِهِ ثُمَّ يَرُوحُ إلى المسْجِدِ ولَا يُفَرِّقُ بَيْنَ اثْنَيْنِ ثُمَّ يُصَلِّي مَا كَتَبَ اللَّهُ لَهُ ثُمَّ يُنْصِتُ للإمام إِذَا تَكَلَّمَ إلاَّ غُفِرَ لَهُ مَا بَيْنَ الجُمُعَةِ إِلَى الْجُمُعَةِ الْأُخْرَى

A man will not take a bath on the day of Jumu'ah, cleans himself as much as he can, applies oil, or wears some perform from his house, and then goes to Masjid not separating between any two sited persons, then observes the optional prayers as much as has been destined for him, and remains silent when the Imam starts talking, except that Allah forgives him of the sins between that Jumu'ah and another one.

Ahmad and others also recorded on the authority of Abu Ayyub ﴿رضي الله عنه﴾ who said: I head the Messenger of Allah ﴿ﷺ﴾ say:

مَن اغْتَسَلَ يَوْمَ الْجُمُعَةِ وَمَسَّ مِنْ طِيبٍ إِنْ كَانَ عِنْدَهُ وَلَبِسَ مِنْ أَحْسَنِ ثِيَابِهِ ثُمَّ خَرَجَ حَتَّى يَأْتِيَ الْمَسْجِدَ فَيَرْكَعَ إِنْ بَدَا لَهُ وَلَمْ يُؤْذِ أَحَدًا ثُمَّ أَنْصَتَ إِذَا خَرَجَ إِمَامُهُ حَتَّى يُصَلِّيَ كَانَتْ كَفَّارَةً لِمَا بَيْنَهَا وَبَيْنَ الْجُمُعَةِ الْأُخْرَى

Whoever takes a bath on the day of Jumu'ah, wears some perfume if he has, puts on one of his best apparel and goes out until he reaches the masjid, and then performs the optional prayers if he feels so, does not hurt anyone, and remains silent as his Imam comes out until he observes the prayer, that will serve as an expiation for what is between that Jumu'ah and another one.

The men of the above hadith are trustworthy. There are other Ahadith over the topic.

As for the assertion that it is meritorious to sit closer to the Imam, the proof for that is the hadith of Samurah ﷺ as found with Ahmad and Abu Dawud that the Prophet ﷺ said:

احْضُرُوا الذِّكْرَ وَادْنُوا مِنْ الْإِمَامِ فَإِنَّ الرَّجُلَ لَا يَزَالُ يَتَبَاعَدُ حَتَّى يُؤَخَّرَ فِي الْجَنَّةِ وَإِنْ دَخَلَهَا

Visit (places of) remembrance (of Allah) and come closer to the Imam, indeed, a person will not cease to stay away until he stays farther from Jannah even if he enters it.

There is a cut in the chain of the hadith. There are other Ahadith on the topic.

Among the acts held to be lawful on the day of Jumu'ah is taking a bath; much has been said over that in the section of bath.

As for the assertion that whoever meets a unit of the Jumu'ah Prayer has met the Prayer, the proof for that is the hadith that goes thus:

مَنْ أَدْرَكَ رَكْعَةً مِن الْجُمُعَةِ فَلْيضِف إِلَيهَا أُخْرَى وقَدْ تَمَّتْ صَلَاتُهُ

Whoever meets a unit in the Jumu'ah Prayer should add the other to it; his prayer is indeed complete.

The hadith has many routes with which it can be said that it is a fair narration supported by other fair narrations.

We have mentioned that Jumu'ah Prayer is like other Prayers, and that its sermon is not a condition such that it will be said that unless the sermon is done the prayer will be said not to be acceptable. I have explained in details – in a wide research work – I did in conjunction with one of the knowledge figures in the aspects he needed from the research work; whoever is interested in that should visit the work, it is a very beneficial one.

As for the assertion that Jumu'ah Prayer is optional on the day of Eid, the proof for that is the hadith of Zaid bin Arqam ﷺ that the Messenger of Allah ﷺ said:

مَنْ شَاءَ أَنْ يُجَمِّعَ فَلْيُجَمِّعْ

Whoever wishes to combine (the Jumu'ah Prayer and the Eid), let him do so.

Ahmad, Abu Dawud, Ibn Majah, An-Nasai and Al-Hakim recorded the hadith. Ali bin Al-Madini held it to be authentic.

Abu Dawud, Ibn Majah, and Al-Hakim also recorded on the authority of Abu Hurairah ﷺ from the Prophet ﷺ that he ﷺ said:

اجْتَمَعَ فِي يَوْمِكُمْ هَذَا عِيدَانِ فَمَنْ شَاءَ أَجْزَأَهُ مِنْ الْجُمُعَةِ وَإِنَّا مُجَمِّعُونَ

Two Eid celebrations are combined for you today (the Jumu'ah and the Eid), the Jumu'ah Prayer suffices whoever wishes that, but we shall combine them.

The narration has been found to be faulty due to a cut between the reporter from a Companion and the Messenger of Allah ﷺ [The name of the Companion was not mentioned]. There is also Baqiyyah bin Al-Walid in its chain. There are several other Ahadith on the topic like the one from Ibn Abbas, Ibn Az-Zubayr and others ﷺ.

What is apparent in the Ahadith is a respite with respect to the person that

performs the Eid Prayer and the person that does not. In fact, An-Nasai and Abu Dawud recorded that Ibn Az-Zubayr, in his reign, did not perform the Jumu'ah Prayer for the people after observing the Eid Prayer. Ibn Abbas ﷺ, when he was told of it, said that Ibn Az-Zubayr ﷺ acted correctly.

There is a problem with the chain of that narration.

باب صلاة العِيدَين

Chapter 2.12 Prayer of the Two Eids

Eid al-Fitr and Eid al-Adha



The Prayer of the Two Eids are two rak'aat; seven Takbirat (saying Allah Akbar) in the first unit, that will come before the recitation of the Qur'an. In the second unit, it is five Takbirat. There is Khutbah in it, so also it is meritorious that one beautifies oneself for it and goes to the outskirts of the town for its observance, and that one passes through alternate routes (to and fro the Eid). It is also desirable that one eats before going to Eid al-Fitr (the Eid of celebrating the end of the fasting of Ramadhan) but not Eid al-Adha (the Eid of sacrifice). The time for observance of the prayer is after the sun has risen in the length of a spear before it reaches the zenith. There is neither Adhan (call to prayer) nor Iqamah (words of establishing the prayer) in the observance of the Eid Prayer.

Explanation:

I say: The people of knowledge differ as to whether the Eid prayer is obligatory or not. The truth is that it is obligatory, because the Messenger of Allah ﷺ despite his usual observance of it (that may be enough to establish its obligation), he did command us to go out for it. That has come in the hadith where he ﷺ commanded the people to set out to the Praying Ground after he had been informed by some strange riders who sighted the new moon. The hadith is authentic.

It has also come in the Sahih in the hadith of Umm Attiyyah ﷺ who said: 'The Messenger of Allah ﷺ commanded us to bring along the young girls, the women in their menstrual cycle, and women in their private quarters for the celebrations of the Fitr and Adha. As for the women in their menstrual cycle, they should stay away from the prayer but come along to witness the goodness of the day and the supplications of the Muslims.

The command that Muslims should come out for the Eid is tantamount to command that they should come out to observe the prayer except for the person who has an excuse, as understood from the purport of the narration. Men come under the command than women.

The Takbirat in the first unit of the prayer before the recitation are seven, and five in the second. The proof for that is the hadith of Amr bin Shuayb from his father, who also reported from his father, ﷺ that the Messenger of Allah ﷺ made twelve takbirat in the Eid Prayer; seven in the first unit and

five in the second unit. The report was recorded by Ahmad and Ibn Majah. [Ahmad said: This is my view. Al-Iraaqi said: The chain of the hadith is good. At-Tirmidhi reported in his Al-Ilal Al-Mufrad from Al-Bukhari that he said: The hadith is authentic.]

In a version reported by Abu Dawud [and Al-Daraqutni], the takbirat in Fitr Prayer are seven in the first unit and five in the second unit, and there is recitation after both. The chain of the hadith is good; Al-Bukhari authenticated it.

At-Tirmidhi also recorded on the authority of Amr bin Awf Al-Muzani that the Prophet ﷺ in the two Eids (the Fitr and the Adha) made seven takbîrât in the first unit, before the recitation of the Qur'an; and in the second unit, he made five takbirat before the recitation of the Qur'an. At-Tirmidhi held it to be fair and he was challenged for that because there is Kathir bin Abdillah bin Amr bin Awf in its chain, who reported his father, who also reported from his father, who is an abandoned reporter.

Al-Nawawi ﷺ said: 'Perhaps, At-Tirmidhi relied on the supportive evidence and others to render it hasan.' End of quote.

Al-Iraaqi ﷺ said: At-Tirmidhi only followed Al-Bukhari (with respect to rendering the hadith fair); he actually said in his book, Al-Ilal Al-Mufrad that he asked Al-Bukhari ﷺ about the hadith and that he said: 'There is no other narration in the section as better as the hadith, and that is my view.' End of quote.

Ibn Majah also recorded it, but there is no mention of recitation of the Qur'an in his version.

Al-Daraqutni also recorded it; so also Ibn Adyy and Al-Baihaqi. But there is Kathir bin Abdillah bin Amr bin Awf who reported on the authority of his father then his grandfather. Al-Shafi'i and Abu Dawud ﷺ said: He is one of the arrowheads of lies. Ibn Hibban said: He has a copy of fabricated works from his father on the authority of his grandfather.

Ibn Majah also recorded on the authority of Sad Al-Qaradh Al-Muadhin that the Prophet ﷺ used to make takbirat in the two Eids; seven in the first unit before the recitation of the Qur'an and five in the other unit before the recitation of the Qur'an. Al-Iraaqi ﷺ said: Its chain is weak.

There are several other Ahadith in the section supporting the view; all the narrations put together are sufficient as proofs. There are about ten schools-of-thought over the issue; the one being discussed here is the clearer view.

As for the assertion that there should be a sermon after the prayer, the proof for that is what has come in the Sahihayn and some other works on the authority

of Abu Sa'id ﷺ. He said the Messenger of Allah ﷺ used to come out on the day of Eid al-Fitr and Eid al-Adha to the prayer ground. He would start with the prayer, after the prayer he would stand up and face the people, while they sat in their rows, and begin to admonish, counsel, and command them. If he felt like raising a delegation or giving a command, he would do so and thereafter took his leave.

There is a hadith under the section recorded on the authority of Jabir bin Abdillah ﷺ as found in Sahih Muslim and other works.

The first person to give the sermon before the prayer of Eid was Marwan; he was challenged on that account.

An-Nasai recorded so also Abu Dawud and Ibn Majah on the authority of Abdullah bin As-Saib ﷺ who said: I witnessed a Eid Prayer with the Messenger of Allah ﷺ, when he finished the prayer, he said:

إِنَّا نَخْطُبُ فَمَنْ أَحَبَّ أَنْ يَجْلِسَ لِلْخُطْبَةِ فَلْيَجْلِسْ وَمَنْ أَحَبَّ أَنْ يَذْهَبَ فَلْيَذْهَبْ

Indeed we want to give sermon, whoever is interested in sitting for the sermon let him sit and whoever wants to take his leave let him leave.

As for the assertion that it is desirable that one puts on beautiful clothes for the Eid Prayer, the proof for that is what is established in the Sahihayn that Umar ﷺ got a pair of complete dress from the market; the dress was made of brocade, and it was for sale. Then Umar ﷺ got hold of it and went to the Messenger of Allah ﷺ and said: O the Messenger of Allah, buy this and beautify yourself with it for the Eid and for receiving delegations.' The Messenger of Allah ﷺ thereafter replied:

إِنَّمَا هَذِهِ لِبَاسُ مَنْ لَا خَلَاقَ لَهُ

Indeed this is clothing of those who will not have a share (in the hereafter).

Al-Shafi'i ﷺ also recorded from his teacher, Ibrahim bin Muhammad, who in turn reported from Jafar bin Muhammad then from his father then from his grandfather that the Prophet ﷺ used to put on a cloak made of flax on every Eid day.

The teacher of Al-Shafi'i ﴿رحمه الله﴾ in the above narration [that is, Ibrahim bin Muhammad] is a weak narrator. But there is supportive evidence in the narration of Said bin As-Salt from Jafar bin Muhammad, and then from his father, from his grandfather, then from Ibn Abbas ﴿رضي الله عنهما﴾; the hadith is as the one mentioned. It was recorded by At-Tabarani ﴿رحمه الله﴾.

Ibn Khuzaymah also recorded from Jabir ﴿رضي الله عنه﴾ that the Prophet ﴿ﷺ﴾ used to put on a red cloak on the Eid days and on the days of Jumu'ah.

As for the desirability of going to the outskirts of the town for its observance, that is due to the usual practice of the Messenger of Allah ﴿ﷺ﴾. The Messenger of Allah ﴿ﷺ﴾ once observed the Eid Prayer in the masjid, but was due to the rain effect as it has come in the hadith of Abu Hurairah ﴿رضي الله عنه﴾ found with Abu Dawud, Ibn Majah, and Al-Hakim. But there is an unknown reporter in the chain of the hadith.

As for the desirability of alternating the routes for going and coming from the Prayer Ground, the proof for that is the hadith of Abu Hurairah ﴿رضي الله عنه﴾ recorded by Al-Bukhari and some others wherein he (Abu Hurairah ﴿رضي الله عنه﴾) said: The Prophet ﴿ﷺ﴾ was such that he would go and come back from the prayer ground on alternative routes on the day of Eid.

Abu Dawud and Ibn Majah recorded the like of the hadith on the authority of Ibn Umar ﴿رضي الله عنهما﴾. Several other Ahadith besides those that have been mentioned are under this section

As for the desirability of eating before leaving for Eid al-Fitr but not Eid al-Adha, the proof for that is what has authentically come in the Sahih on the authority of Anas ﴿رضي الله عنه﴾ who said the Prophet ﴿ﷺ﴾ would not set out for the Eid on the day of Eid al-Fitr until he had eaten some dry dates; and he ﴿ﷺ﴾ would eat odd number of them.

Ahmad, At-Tirmidhi, Ibn Majah, Ibn Hibban, Al-Daraqutni, Al-Hakim and Al-Baihaqi also reported on the authority of Buraydah ﴿رضي الله عنه﴾ who said, the Messenger of Alldah ﴿ﷺ﴾ would not set out for the Eid on the day of Fitr until he had eaten, and he would not eat anything on the day of Adha until he came back.

Ahmad added that the Messenger of Allah ﴿ﷺ﴾ would eat from the animal he slaughtered.

There are other Ahadith under the section.

As for the assertion that the time for the observance of the Eid Prayer is when the sun rises to the spear length before it reaches the zenith, the proof for that is what Ahmad bin Al-Hasan Al-Banna said in his book Kitaabu Al-Adhaahi on the authority of Jundub ﴿رضي الله عنه﴾ who said, the Messenger of Allah ﴿ﷺ﴾ was such

that he would observe the prayer for us on the day of Fitr while the sun would be at the length of two spears; as for the prayer of Adhha, he ﷺ would do so while the sun was at the length of a spear.

Abu Dawud also recorded so also Ibn Majah on the authority of Abdullah bin Busr – a Companion of the Messenger of Allah ﷺ, that he (Abdullah bin Busr ﷺ) went out with the people on the day of Fitr or Adhha, he then faulted the lateness of the Imam in coming out for the Prayer, he then said: 'By this time, we would have finished the prayer (in the time of the Messenger of Allah ﷺ). That was the time of the Prayer.

Al-Shafi'i also recorded a narration which is a Mursal that the Prophet ﷺ wrote to Amr bin Hazm ﷺ who was in Najran that he should hasten the Adhha Prayer but delay the Fitr Prayer. There is Ibrahim bin Muhammad, teacher of Al-Shafi'i, in the chain; he is a weak narrator.

There is a consensus on what the Ahadith indicate though they are not sufficient as proofs.

As for the latest time the prayers of the two Eids can be observed, then it is when the sun leaves the zenith. When the leaving for the prayer is after the sunrise till the sun reaches its zenith, as some people of knowledge have said, then the hadith of the Messenger of Allah ﷺ whereby he commanded the riders to move to the prayer ground point to that.

The author of Al-Bahr said that the time is after the sun might have become clearer till the sun reaches the zenith; I do not know any difference of opinion as regard that.

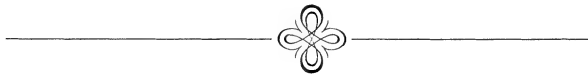
As for the assertion that there is neither Adhan nor Iqamah, the proof for that is what has come in the Sahih on the authority of Jabir Ibn Samurah ﷺ who said: I observed the Eid Prayer with the Prophet ﷺ not once or twice, there was neither Adhan nor Iqamah.

It has also come in the Sahihayn on the authority of Ibn Abbas ﷺ that he said: The Adhan neither used to be made on the day of Fitr nor on the day of Adhha.

There are other Ahadith under the section.

باب صلاة الخَوف

Chapter 2.13 Prayer of Fear



The Messenger of Allah ﷺ indeed observed the Prayer of Fear in a number of ways; all the manners are acceptable. For instance, when the fear is severe and the fighting becomes very tense, the prayer can be observed on foot or while riding, it can even be observed facing a direction other than the Qiblah, and with just movements of the limbs.

I say: The Prayer at time of fear has come in a number of ways; it is said, in about sixteen or seventeen, or eighteen ways. Some said the numbers of the ways are less than that.

A number of the ways have come authentically from the Messenger of Allah ﷺ; there was an instance where he ﷺ observed two units of prayer for each group of the two groups of the warriors; thus the Messenger of Allah ﷺ observed four units while the people observed two. This manner of observing the prayer is well established in the Sahihayn in the hadith recorded on the authority of Jabir bin Abdillah رضي الله عنه.

There was another instance where he ﷺ only observed a unit for each of the group of the people; thus he ﷺ observed two units in all while each group observed one. This manner is recorded by An-Nasai with a chain made up of trustworthy men.

Another manner was that the Messenger of Allah ﷺ observed the prayer for all the people. He ﷺ made the takbîr and the people made it too, he went to the bowing position, the people followed him, he rose and they rose with him, he then prostrated but it was only the people in the row behind him that went in prostration with him. The people in the second row stood on watching the enemy. When the Prophet ﷺ finished the prostration with the people with him, the second row went into prostration and later stood up, then the second row changed their position to the front and the former first row found themselves in the rear. They did as was done in the first unit while the former first row was at the rear and the rear became the front row. Then the Messenger of Allah ﷺ made the salutation, and all of them followed suit. This manner of observing the prayer in time of fear is established in Sahih Muslim and some other books in the hadith recorded on the authority of Jabir bin Abdillah رضي الله عنه; so also in the hadith of Abu Ayyaash Az-Zuraqiyy as recorded by Ahmad, Abu Dawud and An-Nasai.

Another manner of performing the prayer of fear is that the Messenger of Allah

ﷺ would observe a unit with each of the two groups of the people while the other ground would stand to watch the enemy. The group observing the prayer would (complete their prayers themselves and) leave to stand in the position of their brethren that were facing the enemy. The second group would come and the Prophet ﷺ would observe a unit for them as well and then make salutation. The second group too would complete the remaining one unit themselves. This manner of observing the prayer of fear is established in the Sahihayn in the hadith of Ibn Umar رضي الله عنه.

Another manner was that a group observed the prayer with the Messenger of Allah ﷺ while the other group was watching the enemy, backing the Qiblah direction. He ﷺ made takbîr, and all the people said it with him – those with him and those facing the enemy –, he then went to bowing and made one bowing, and the group with him made one bowing too, then the Messenger of Allah ﷺ went to prostration and they prostrated with him as well while the other group were facing the enemy. Then he ﷺ stood up and the group with him stood up too after which they went and faced the enemy. The group that was facing the enemy before then came, went to bowing and prostration while the Messenger of Allah ﷺ remained as he was. Thereafter, they rose, he ﷺ made another bowing and they made the bowing with him; he also went to prostration and they went with him. Then the group facing the enemy came, bowed, and prostrated while the Messenger of Allah ﷺ was sitting alongside those that were with him as well. Then it was time to say the salutation; he made it and they all made the salutation with him. Thus the Messenger of Allah ﷺ performed two units and each of the group performed two units too. This manner of performing the prayer of fear was recorded by Ahmad, An-Nasai and Abu Dawud.

Another manner was that the Messenger of Allah ﷺ would observe a unit with a group of people while another group would be facing the enemy, then he ﷺ would remain standing while the people would complete the prayer for themselves then they would move and face the enemy. Then another group would come to the Messenger of Allah ﷺ and he would observe the unit of prayer that remained in his own prayer with them and they would complete their prayers themselves and he would made the salutation for them. This manner of observing the prayer at the time of fear is established in the Sahihayn in the hadith recorded on the authority of Sahl bin Abee Hathmah رضي الله عنه.

The Prophet's manner of performing the prayer in the time of fear came in different ways because he ﷺ used to consider the best manner for the prayer and better security wise.

As for Maghrib Prayer, there is a consensus that reduction does not apply to it. There is a difference of opinion as to whether it is best that the Imam observes two units with the first group then one with the other group; or the other way round. There is no narration from the Prophet ﷺ that is authentic as regard

that. It was reported that Ali bin Abi Talib ﷺ observed Maghrib Prayer in the night of Battle of Hareer; there are variations in the reports of how he observed it just as there are variations in what people say about it. What is however apparent is that, whatever manner is adopted is permissible; if he observes three units for each of the group such that Imam would observe six units in all while each of the group would observe three, it is correct based on the manner of observing the prayer of fear in other than the Maghrib Prayer. It is known that someone observing an optional prayer can lead a person observing an obligatory one as it has earlier come in the book.

As for the manner of observing the prayer of fear when the fighting becomes tense – the prayer that is referred to as-Salaatul-Masaayif. Al-Bukhari recorded on the authority of Ibn Umar ﷺ in the section of Tafseer of Surah Al-Baqarah the wording: If the fear becomes severer then observe your prayer on your heels or on your rides whether you are facing the Qiblah or not.

Malik ﷺ reported from Naafi ﷺ: I did not see Abdullah bin Umar mention that except from the Messenger of Allah ﷺ.

The report is also in Sahih Muslim in a similar way.

Ibn Majah too recorded it on the authority of Ibn Umar ﷺ that the Messenger of Allah ﷺ described the prayer of fear as this: If the fear becomes severer then observe you prayer on your heels or on your rides.

Ahmad and Abu Dawud recorded with a fair chain via Abdullah bin Unays ﷺ who said: 'The Messenger of Allah ﷺ sent me to Khalid bin Sufyan; he ﷺ was in the direction of Uranah and Arafah, he said to me: Go and kill him. Ibn Unays said: I saw him and it was time for the Asr Prayer; I said, I wish there should be some times between me and him that will be enough for me to delay the prayer.' I went on while I was observing the prayer, making movements with my limbs towards him, and when I came closer to him…

It would be very strange that Ibn Unays ﷺ would not inform the Messenger of Allah ﷺ about that; and if the Messenger of Allah ﷺ disapproved it he would have mentioned it.

باب صلاة المُسَافر

Chapter 2.14 Prayer of the Traveller



It is obligatory for whoever leaves his town with the intention of embarking on a journey to shorten the prayer, even if the journey is less than a bareed[9]. But if he settles in a town wavering (whether he would proceed on the journey or not), he should shorten his prayers for twenty days, and if he is sure to stay in the town for four days, he should then complete his prayers thereafter. He can also merge prayers whether in the forward manner or deferment way with one Adhan and two Iqamahs.

Explanation:

I say: As for the obligation of shortening the prayers, the proof for that is the hadith of 'A'ishah ﵂ that came in the Sahih that the Messenger of Allah ﷺ said:

فُرِضَت الصَّلَاةُ رَكْعَتَيْنِ رَكْعَتَيْنِ فَزِيدَتْ فِي الْحَضَرِ وأُقِرَّتْ فِي السَّفَرِ

The prayers were made compulsory as two units each; those (observed) at residence were increased while those done on journeys were retained.

The hadith above implies that prayers on journey remain on the former foundations therefore whoever completes his prayers on a journey is as if he knowingly observes two-unit prayers as four and four-unit prayers as eight when at home.

It has also come authentically in the Sahih that the Messenger of Allah ﷺ said:

صَدَقَةٌ تَصَدَّقَ اللَّهُ بِهَا عَلَيْكُمْ فَاقْبَلُوا صَدَقَتَهُ

9 Approximately twelve miles.

A charity Allah made for you; take Allah's charity.

The Messenger of Allah ﷺ used to shorten his prayers while on journeys.

As for the assertion that it is obligatory to shorten the prayers by him who leaves his town with the intention of a journey even if the journey is less than a bareed, the proof for that is what Allah The Almighty said:

وَإِذَا ضَرَبْتُمْ فِي الْأَرْضِ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَقْصُرُوا مِنَ الصَّلَاةِ

And when you (Muslims) travel in the land, there is no sin on you if you shorten your Salah (prayer)...' [An-Nisa: 101].

Travel in the land may mean all kinds of travelling, but does not include an act of strolling in the land that is shorter than a journey distance. The Messenger of Allah ﷺ used to make such strolling sometimes as his going to Baqee-al-Gharqad and other strolls but he ﷺ would not shorten the prayer.

Nothing reliable has come as to the actual length of the distance a traveller can shorten his prayer. Therefore, the recourse has to be made to all what is referred to as a journey whether in the usage of the language or custom.

Whoever leaves his town with the intention of going to a place where the movement to it is regarded as a journey (in the usage of the people), such will shorten his prayer even if that place is less than a bareed. Those who have said a distance must be up to a bareed, or it must take place for a day or two days or three days, or more; those who stipulate such have not come with convincing proofs; the utmost they have come with is this hadith:

لا يَحِلُّ لامرأةٍ تُؤمنُ باللَّهِ واليومِ الآخِرِ أن تُسَافِرَ ثَلاثَة أيامٍ بغيرِ ذِي مَحْرَم

It is not permissible for a woman who believes in Allah and the Last Day to travel for three days without a male companion prohibited to her in marriage or her husband.

In a version, it reads:

يَوماً وَلَيْلَة

[For] a day and night.

In a version, it reads:

بريداً

A bareed

There is no mention of shortening the prayers in the hadith or its context; therefore citing the hadith as a proof is a mere conjecture.

The best that has been mentioned under the issue of what distance can make one shorten the prayer is what Shubah ﷺ reported from Yahya bin Zaid Al-Hunaaiyy ﷺ. He said: I asked Anas bin Malik ﷺ regarding shortening the prayers (on journeys), he replied, The Messenger of Allah ﷺ was such that whenever he travelled a distance of three miles or three faraasikh (approximately: 24 kilometres), he would shorten his prayers to two units (except Maghrib and Subh Prayers).' The doubt as to the actual distance was from Shubah ﷺ as recorded by Muslim and other recorders of hadith.

So, if you were to say that a woman is prohibited from embarking on journey without a male who is prohibited in marriage to her or her husband as a companion because the Messenger of Allah ﷺ described the distance mentioned in the hadith as a journey, I say, 'the fact that the Messenger of Allah ﷺ described that distance as a journey does not rule out referring to a shorter distance as journey. The Messenger of Allah ﷺ indeed described the distance of three faraasikh as a journey just as he ﷺ described the distance of a bareed (three miles) as a journey in the same hadith, though there are some uncertainties in the report. Moreover, the fact that a bareed is described as a journey does not rule out calling a distance shorter than that a journey.

Furthermore, if you were to say that what about the hadith recorded by Al-Daraqutni, Al-Baihaqi and At-Tabarani on the authority of Ibn Abbas ﷺ that the Messenger of Allah ﷺ said:

يا أَهْلَ مَكَّةَ لا تَقْصُرُوا فِي أَقَلَّ مِنْ أَرْبَعَةِ بُرُدٍ مِنْ مَكَّةَ إِلَى عُسْفَانَ

O people of Makkah! Do not shorten your prayers in a distance less than four bareed; from Makkah to Usfan.

I say, there is Abdul-Wahab bin Mujahid bin Jabr in its chain; he was an abandoned reporter.

There are different schools-of-thought over the matter, but this view (that there is no limit to the distance so far it is called a journey) is what is clearer to me.

As for the assertion that when a traveller settles in a town but not sure of when to leave, that he will continue to shorten his prayers till twentieth day, and then start to complete his prayers afterwards. This view is informed by the fact that whoever is on a journey, when he settles in a place and ties down his ride, he will no more be considered a traveller. That is because the difficulties of journey are no more. In fact, if not that the lawgiver refers to whoever travels to and stays in a place as a traveller [like this statement:]

أَتِمُّوا يَا أَهْلَ مَكَّةَ فَإِنَّا قَوْمٌ سَفْرٌ

Complete your prayers, O people of Makkah; we are indeed a people on a journey,

If not, a person who travels to a place and stays there will not be considered a traveller.

What is obligatory is that prayers should be shortened even if one stays in a place (whilst on a journey) as the lawgiver has stipulated. Whatever is above that then the traveller will be regarded as a resident, thus it becomes obligatory upon him to complete his prayers because he has become a resident; he is no more a traveller.

The Messenger of Allah ﷺ stayed in Makkah on the occasion of the Conquest of Makkah, it is said that he ﷺ stayed eighteen nights; some said nineteen nights and some said a period less than that.

It has come in Sahih Al-Bukhari and some others that the duration of time the Messenger of Allah ﷺ spent in Makkah were nineteen days.

Ahmad and Abu Dawud recorded on the authority of Jabir bin Abdullah that the Messenger of Allah ﷺ stayed in Tabuk for about twenty nights while he shortened his prayers in the course.

Ibn Hibban recorded it also, so also Al-Baihaqi رحمه الله while Ibn Hazm رحمه الله

Authenticated it as well as Al-Nawawi رحمه الله. Thus, it is obligatory upon us that we should remain on this length and complete our prayers afterwards.

What a good scholar was Abdullah bin Abbas رضي الله عنهما, what a knowledgeable and understanding person he was with respect to the objectives of the Shari'ah. As was recorded on his authority by Al-Bukhari and some other recorders, he said that when the Messenger of Allah ﷺ liberated Makkah, he ﷺ stayed there for nineteen nights shortening his prayer. Ibn Abbas رضي الله عنهما said: Thus whenever we travelled and stayed in a place for nineteen days, we would shorten our prayers but if we stayed longer, we would complete it.

I say: This Ibn Abbas view is a succinct and nice jurisprudential thought, and one based on the most profound verification. If Jabir رضي الله عنه were to say to him: We stayed with the Messenger of Allah ﷺ at Taabuuk for twenty nights shortening our prayers' he (Ibn Abbas رضي الله عنهما) would certainly reply that it was imperative.

There are several schools-of-thought on the issue; but this is the view most appealing to me.

As for the assertion that when a traveller is sure of settling in a place for four days, that he will have to be completing his prayers afterwards. That view is implied from what we explained earlier that a resident is not treated like a traveller, if at all, it should be within the limit established by the lawgiver – Sallallahu alayhi wa sallam; that is what must be held to. What is established from him ﷺ regarding a traveller who wavers as to whether he should stay behind in a place or continues his journey has been discussed. But regarding someone who does not waver, rather he is sure that he is going to stay behind for some specific days, it is obligatory that he does as the Messenger of Allah ﷺ did. He stayed in Makkah with the determination of staying for hajj.

It is established in the Sahihayn that the Messenger of Allah ﷺ arrived in Makkah the fourth day of Dhul-Hijjah and he ﷺ stayed there the fourth, fifth, sixth and seventh day then observed the Subh Prayer on the eighth day and then left for Mina. Thus, he stayed in Makkah for about four days shortening his prayers, doing that with the determination of staying in Makkah till he would begin the rites of hajj. That occurrence from him ﷺ is a proof that whoever is sure that he will stay in a place for some specific days will shorten his prayers for four days after which he will begin to complete his prayers. That is not because if he ﷺ had stayed more than four days, he would have completed his prayers, we do not know that. Rather it is in the perspective of

saying that a resident who is sure that he will stay in a place for some specific days will not shorten his prayers except with a permission (under the Shari'ah) just as the person who is not sure will do the same.

The permission has however not come; adding to that, there is no authentic report other than what has been said from the lawgiver with that respect.

Know that these three research works that are mentioned in this section are among the 'battle grounds' wherein the intellects look foolish. Schools-of-thoughts have had several serious (intellectual) confrontations over the matter such that there have come several distinct views.

As for the assertion that a traveller can merge prayers together whether in the forward or deferment manner, with only one Adhan but two Iqamahs. The proof for that is what has come in the Sahihayn in the hadith recorded on the authority of Anas bin Malik ﷺ. He said: 'The Messenger of Allah ﷺ was such that whenever he wanted to embark on a journey and the sun was yet to reach the zenith, he would delay his Zhuhr Prayer till the time of Asr, then he would descend and merge the two prayers. But if the sun had reached the zenith before he began the journey, he would observe the Zhuhr Prayer then climb his ride.

Ahmad, Abu Dawud, At-Tirmidhi – who found to be fair, - Ibn Hibban, Al-Hakim, and Al-Daraqutni recorded on the authority of Muadh ﷺ that the Messenger of Allah ﷺ during his journey to the Battle of Tabuk, whenever he waited to rest in a place and took off before the sun reached the zenith, he would delay Zhuhr Prayer till he combined it with the Asr Prayer. But when he took off the journey after the sun had reached the zenith, he would observe both the Zhuhr and Asr Prayers then carried on with the journey.

Ahmad recorded the like of the hadith on the authority of Ibn Abbas ﷺ but has an addition of Maghrib and Isha Prayers. Al-Baihaqi and Al-Daraqutni also recorded it; Ibn Al-Arabiyy said its chain is authentic. But Ibn Al-Arabiyy was challenged on that judgment with the fact that there is presence of a figure whose hadith is not acceptable. But the two hadith have routes with which they strengthen each other; nothing can necessitate the conclusion that they cannot be worked with altogether.

Another hadith that talks about merging the Maghrib and Ishaa Prayers is the hadith of Ibn Umar ﷺ that is found in the Sahihayn and some others. He said the Messenger of Allah ﷺ was such that whenever he was advancing with a serious motion would delay the Maghrib Prayer till the sun set and the twilight appeared, he would then merge it with the Ishaa Prayer.

As for the assertion that the merger is done with one Adhan and two Iqamahs, this is what is established in the Sahihayn in the Prophet's act of merging the prayers at Muzdalifah.

باب صلاة الكُسوفَين

Chapter 2.15 Prayer of the Two Eclipses

Lunar and Solar Eclipses



It is only a meritorious act (not obligatory). The most authentic report that has come as to the manner of its observance is that it is just two units; in each unit there are two bowing. There are other reports that it can be three, four, or five bowins in each unit. There is recitation between the two bowing. There is another report that there is just one bowing in each of the unit. It is desirable to make supplications therein, so also saying Allahu Akbar, giving charity and seeking forgiveness of the sins.

Explanation:

I say: As for the assertion that it is meritorious, this is because there is no evidence indicating its obligation. The mere fact that the Messenger of Allah ﷺ did it cannot establish other than its being meritorious.

As for the assertion that the most authentic report that has come on the manner of observing it is that it is two units with two bowing, the proof for that is what has come in the Sahihayn and some other books in the hadith of 'A'ishah, Ibn Umar, and Ibn Abbas ﷺ.

As for the assertion that it can be three bowing in each unit, that has come authentically in the hadith recorded on the authority of Jabir ﷺ as found with Muslim and some other recorders of hadith. So also on authority of Ibn Abbas ﷺ as found with At-Tirmidhi, who held it to be authentic, and on the authority of 'A'ishah ﷺ as found with Ahmad and An-Nasai.

As for the assertion that it can be four bowing in each unit, that is established in Sahih Muslim and some other works in the hadith recorded on the authority of Ibn Abbas ﷺ.

As for the assertion that it can be five bowing in each unit, Abu Dawud, Al-Hakim and Al-Baihaqi recorded a hadith to that effect on the authority of Ubayy bin Kab ﷺ.

As for the assertion that it is two units and one bowing in each unit, the proof for that can be found in Sahih Muslim and some other works in the hadith narrated on the authority of Samurah ﷺ. Abu Dawud, Ahmad, An-Nasai

and Al-Hakim also recorded it; Ibn Abdil-Barr ﷺ authenticated it on the authority of An-Numan bin Al-Bashir ﷺ. Abu Dawud, An-Nasai and Al-Hakim recorded the hadith on the authority of Qabisah, ﷺ.

As for the assertion that it is desirable that supplications are made in the course of the prayer so also saying Allahu Akbar and seeking forgiveness of sins from Allah, the proof for that is the hadith narrated on the authority of Asma [that the Messenger of Allah ﷺ said:]

فَإِذَا رَأَيْتُمْ ذَلِكَ فَادْعُوا اللَّهَ وَكَبِّرُوا وَتَصَدَّقُوا وَصَلُّوا

When you see it (the eclipse), make supplications to Allah, magnify Him, give charity and observe the prayer of the eclipse.

The narration can be found in the Sahihayn.

So also is what is contained in the hadith recorded in the Sahihayn on the authority of Abu Musa in this wording:

فَإِذَا رَأَيْتُمْ شَيْئًا مِنْ ذَلِكَ فَافْزَعُوا إِلَى ذِكْرِ اللَّهِ وَدُعَائِهِ وَاسْتِغْفَارِهِ

When you see anything of such, hasten to the remembrance of Allah, making supplications to Him and seeking His forgiveness.

The narration above is in the Sahihayn.

In addition, in the version of the hadith narrated on the authority of Al-Mughirah ﷺ, [the Messenger of Allah ﷺ said:]

فَإِذَا رَأَيْتُمُوهُمَا فَادْعُوا اللَّهَ وَصَلُّوا حَتَّى يَنْجَلِيَ

When you see any of the two (the moon or sun eclipse), make supplications to Allah, observe prayers until it becomes clear.

The narration is also in the Sahihayn.

باب صلاة الاسْتِسْقَاء

Chapter 2.16 Prayer for Rain



It is desirable during drought; it is two units. There is a sermon after the two units; the sermon will include words of remembrance of Allah, exhortation to obedience to Him, and warning from disobedience to Him. The Imam – and those with him – should be much in seeking forgiveness for their sins from Allah, so also they should be much in supplications that the drought be removed. All of them – after that – should turn over their cloths.

Explanation:

I say: As for the assertion that it is desirable, this is due to lack of evidence to its being obligatory.

As for the assertion that it is two units with a sermon, it is because the Messenger of Allah ﷺ came out (on the day he observed it) when the edge of the sun was appearing; he ﷺ then mounted the pulpit. The narration went on. There is in the hadith the mention of supplications and turning over of the cloaks. The hadith is recorded in Sunan Abi Dawud. Abu Awanah, Ibn Hibban, and Al-Hakim also recorded it; Ibn As-Sakan ﷺ found it to be authentic.

Ahmad, Ibn Majah, and some recorders other than them recorded on the authority of Abu Hurairah ﷺ. He said: The Prophet ﷺ came out one day seeking the rain as we did; he ﷺ observed two units of prayer for us without an Adhan or Iqamah, he then made a sermon. He made supplications to Allah, The Almighty and the Sublime, in the process. He ﷺ thereafter turned his face towards the Qiblah raising his two hands and turned over his cloak such that he made the one on the right hand side be on the left and vice-versa.

There are several other Ahadith pointing to the same effect; the Ahadith indicate that there is making of supplications that the drought be removed and rain falls. And that the Imam and those with him turn over their cloaks.

Said bin Mansuur ﷺ recorded in his Sunan that Umar [ibn Al-Khattab ﷺ]

Sought rain with prayer, that he did not do more than seeking forgiveness of sin. The Messenger of Allah ﷺ indeed used to raise his two hands during the prayer of seeking for rain to the extent that the whiteness of his armpits would be seen.

The Companions ﷺ too used to observe the prayer of seeking for rain

after him, delegating one of the eminent personalities among them for the supplications on their behalf; especially the relative of the Messenger of Allah ﷺ among them. An example of that was what Umar [bn Al-Khattab ﷺ] did, that he ﷺ delegated Al-Abbas to pray and make supplications on their behalf. Among the supplications he ﷺ used to make is:

اللَّهُمَّ أَغِثْنَا اللَّهُمَّ أَغِثْنَا

O Allah, give us downpour; O Allah, give us downpour.

That is how the hadith has come in the Sahihayn on the authority of Anas bin Malik ﷺ.

Another supplication of his ﷺ on such events is this:

اللَّهُمَّ اسْقِنَا غَيْثًا مُغِيثاً مَرِيئًا مَرِيعًا طَبَقًا غَدَقاً عَاجِلًا غَيْرَ رَائِثٍ

O Allah, give us rain; a pleasant one, plentiful, penetrating, presently not later.

This wording is what can be seen in what Ibn Majah ﷺ recorded on the authority of Ibn Abbas ﷺ.

All the wordings are established in reports of the Companions ﷺ other than what was reported from Ibn Abbas ﷺ and in other books than Ibn Majah's. Among such is this:

اللَّهُمَّ أَنْتَ اللَّهُ لَا إِلَهَ إِلَّا أَنْتَ أَنتَ الْغَنِيُّ وَنَحْنُ الْفُقَرَاءُ أَنْزِلْ عَلَيْنَا الْغَيْثَ وَاجْعَلْ مَا أَنْزَلْتَ لَنَا قُوَّةً وَبَلَاغًا إِلَى حِينٍ

O Allah, You are Allah (the One worthy of worship), there is no deity worthy of worship beside You. You are the Rich while we are poor, cause the rain to descend on us and make whatever You might cause to descend a source of power for us and a need for the time being.

The hadith is in Sunan Abi Dawud with an authentic reported by 'A'ishah ﷺ.

Here is another supplication of his ﷺ:

اللَّهُمَّ اسْقِ عِبَادَكَ وَبَهِيمَتَكَ وَانْشُرْ رَحْمَتَكَ وَأَحْيِ بَلَدَكَ الْمَيِّتَ

O Allah, satiate Your slaves and Your livestock; cause mercy to spread across and bring Your dead land back to life.

There are several other supplications.

As for turning over the clothes, there is a narration as regargs that; that was what was earlier mentioned on the issue of turning the right hand side of the cloth to the left and the left to the right.

It was also reported that the Messenger of Allah ﷺ turned the front of his cloth to the back, so also were the people with him. The hadith was recorded by Ahmad on the authority of Abdullah bin Zaid ﷺ; the basis of the hadith is the Sahih.

3 كتاب الجَنائِز
Book of Janaiz
Funerals

باب احكام المحتضر

Chapter 3.1 Ruling Regarding Someone on Dead Bed

It is part of the Sunnah to visit a sick person, make the person on the verge of death say the two statements of testimony (La Ilaha illa Allah, Muhammadu Rusuulullah ﷺ), make him face (the Qiblah), close his eyes when he has passed away, recite Surah Ya-Sin on him. So also hastening in taking care of his funerals except when his death is needed to be actualized, paying his debt, as well enshrouding him. It is permissible to kiss him. It is upon the sick person to have a good thought about his Lord by repenting to Him and freeing himself from all burdens that might be upon him.

Explanation:

I say: As for visiting the sick person, the Ahadith that have discussed its legality are numerous. The lawgiver ﷺ has made it one of the duties Muslims owe one another; there is in the Sahihayn and other works, the hadith recorded on the authority of Abu Hurairah رضي الله عنه that the Messenger of Allah ﷺ said:

حَقُّ الْمُسْلِمِ عَلَى الْمُسْلِمِ خَمْسٌ رَدُّ السَّلَامِ وَعِيَادَةُ الْمَرِيضِ وَاتِّبَاعُ الْجَنَائِزِ وَإِجَابَةُ الدَّعْوَةِ وَتَشْمِيتُ الْعَاطِسِ

Rights of Muslims upon one another are five: Returning salutation of salaam, visiting the sick person, following the corpse (of a dead Muslim), responding to

invitations, and responding to the who sneezes by saying May Allah be merciful to you.

There is an addition of the order of 'advising one another' in Sahih Muslim. In Al-Bukhari, there is an addition of this statement:

نَصْرُ الْمَظْلُومِ وَإِبْرَارُ القَسَمِ

And helping the oppressed and redeeming the pledge.

As for helping the person on the verge of death to make the statement of testimony, the proof for that is the hadith that has come in the Sahih from the Messenger of Allah ﷺ that he said:

لَقِّنُوا مَوْتَاكُمْ لَا إِلَهَ إِلَّا اللَّهُ

Make your dying person say: La Ilaha illa Allah (There is none worthy of worship in truth except Allah).

There are several other Ahadith in the section.

As for making the person on the verge of death face the Qiblah, the proof for that is the hadith recorded on the authority of Ubayd bin Umayr on the authority of his father that the Messenger of Allah ﷺ said, after a man asked him regarding the major sins:

هُنَّ تِسْعٌ: الشِّرْكُ بِاللهِ وَالسِّحْرُ وَقَتْلُ النَّفْسِ وَأَكْلُ الرِّبَا وَأَكْلُ مَالِ الْيَتِيمِ وَالتَّوَلِّي يَوْمَ الزَّحْفِ وَقَذْفُ الْمُحْصَنَاتِ وَعُقُوقُ الْوَالِدَيْنِ وَاسْتِحْلَالُ الْبَيْتِ الْحَرَامِ قِبْلَتِكُمْ أَحْيَاءً وَأَمْوَاتًا

They are nine: Ascribing partners to Allah, sorcery, killing, devouring the wealth of an orphan, turning one's heels in the (legitimate) battle ground, slandering the chaste (Muslim) women, disobedience to the two parents, violating the sanctity of the Sacred House; your Qiblah, the living and dead.

Abu Dawud recorded the hadith, so also An-Nasai and Al-Hakim. Al-Baghawi mentioned it in Al-Jadiyaat in a similar hadith recorded on the authority of Ibn Umar ﷺ; however, there is Ayyub bin Utbah in its chain – he is a weak narrator.

The hadith has been cited as the proof for the legality of making the sick person face the Qiblah so that he can die facing it; that is inferred from the statement of the Messenger of Allah ﷺ:

قِبْلَتِكُمْ أَحْيَاءً وَأَمْوَاتًا

Your Qiblah, the living and dead.

There is a weakness in that view because what is intended in his statement ﷺ: The living is when observing the prayer, and 'the dead when making the niche in the grave for a person who is about to die, who cannot observe prayers any longer. Therefore, the hadith does not indicate that view, if not, it would be imperative to say that facing the Qiblah is obligatory upon the living at all time not necessarily when one is performing prayers, which is contrary to the consensus. Rather than making evidence for the view from that hadith, it may be better to make evidence with what Al-Hakim and Al-Bayhaqi reported on the authority of Abu Qatadah that Al-Bara bin Marur left a testamentary word that he should be made to face the Qiblah whenever he approached death. The Messenger of Allah ﷺ commended it by saying:

أَصَابَ الفِطْرَة

He acted according to the Fitrah.

There is a difference of opinions as to the manner of making the person on the verge of death face the Qiblah. Some said he should be placed facing it while reclining on his back so that he would be able to face it with all his body, while others said he should be made to face it on his right hand side lying. It is this second opinion that is better.

As for closing the eyes of the dead person (immediately he dies), the proof for that is the hadith recorded on the authority of Shadaad bin Aws as found

with Ahmad, Ibn Majah, At-Tabarani and Al-Bazzar that Shadaad said that the Messenger of Allah ﷺ said:

إِذَا حَضَرْتُمْ مَوْتَاكُمْ فَأَغْمِضُوا الْبَصَرَ فَإِنَّ الْبَصَرَ يَتْبَعُ الرُّوحَ وَقُولُوا خَيْرًا فَإِنَّهُ يُؤَمَّنُ عَلَى مَا قَالَ أَهْلُ الْمَيِّتِ

If you are present at the time of the death of your people, then close their eyes, verily the eyes follow the soul. Say what is good because statement of grant (Aamin) will be said to whatever the people of a household say.

Muslim also recorded in his Sahih that the Messenger of Allah ﷺ entered upon Abu Salamah رضي الله عنه while he died and his eyes were opened, he ﷺ closed them and said:

إِنَّ الرُّوحَ إِذَا قُبِضَ تَبِعَهُ الْبَصَرُ

Verily, the eyes follow the soul when it is taken (from a body). As for the assertion that Surah Ya-Sin should be recited on the dying person, the proof for that is this hadith:

اقْرَءُوا عَلَى مَوْتَاكُمْ يس

Recite Surah Ya-Sin over your dead ones.

The hadith is recorded by Abu Dawud, An-Nasai and Ibn Majah. Ibn Hibban authenticated it in the hadith reported on the authority of Maqil bin Yassar from the Messenger of Allah ﷺ. The narration has been found to be somewhat faulty.[10]

The author of Musnad Firdaus has a report similar to the hadith on the authority

10 It has been explained beyond doubt by the scholars past and present, as Al-Imam Shawkani pointed out here, that there is no suitable evidence to back this act. It is however regarded as an innovation in the Deen. [Editor]

of Abu Ad-Darda and Abu Dharr (ﷺ). Abu Ash-Shaykh also recorded a hadith similar to it in Fadl Al-Qur'an on the authority of Abu Dharr alone.

Ibn Hibban said in his Sahih that what is intended in the statement of the Messenger of Allah (ﷺ): 'Recite Surah Ya-Sin over the dead ones, is that it is for a person who is dying not the dead. This is what is intended in other statement of the Messenger of Allah (ﷺ) Make your persons on the verge of death say: La Ilaha illa Allah (There is none worthy of worship except Allah).

As for the requirement to hasten the burial process of the dead except when his death is needed to be actualized. The proof for that is the hadith recorded by Abu Dawud on the authority of Al-Husayn bin Wahwah that Talhah bin Al-Bara (ﷺ) was sick and the Messenger of Allah (ﷺ) paid him a visit and said in the course of that visit:

إِنِّي لَا أَرَى طَلْحَةَ إِلَّا قَدْ حَدَثَ به الْمَوْتُ فَآذِنُونِي بِهِ وَعَجِّلُوا فَإِنَّهُ لَا يَنْبَغِي لِجِيفَةِ مُسْلِمٍ أَنْ تُحْبَسَ بَيْنَ ظَهْرَانَيْ أَهْلِهِ

I do not see except that Talhah is close to death, get me informed when he passes away and be swift in preparing his burial because it is not proper that the corpse of a Muslim is kept amidst his kith and kin.

Ahmad and At-Tirmidhi recorded a hadith on the authority of Ali bin Abi Talib (ﷺ) who reported from the Messenger of Allah (ﷺ) that he (ﷺ) said:

ثَلَاثٌ لَا يُؤَخِّرْنَ الصَّلَاةُ إِذَا أَتَتْ وَالْجَنَازَةُ إِذَا حَضَرَتْ وَالْأَيِّمُ إِذَا وَجَدَتْ كُفْؤًا

There are three things that should not be delayed, as-Salaat (prayers) when its time arrives, funeral procession at death, and marriage of a spinster when she finds a suitable partner.

Nevertheless, if it is believed that someone has not really died, then he should not be buried until his death is confirmed. An example of that is a person suffering from pleurisy and the like

As for the requirement to hasten the payment of debt (owed by the demise), the proof for that is the refusal of the Messenger of Allah (ﷺ) to pray over a dead person who incurred some debts until one of the Companions vouched to pay the debt on his behalf; the hadith is a very popular one.

Another proof is the hadith that goes thus:

نَفْسُ الْمُؤْمِنِ مُعَلَّقَةٌ بِدَيْنِهِ حَتَّى يُقْضَى عَنْهُ

The soul of a believer will be tied to his debt until it is paid for him.

Recorded by Ahmad, Ibn Majah and At-Tirmidhi who authenticated it; the hadith was recorded on the authority of Abu Hurairah ﷺ.

As for shrouding the dead with a complete cover cloth, the proof for it is what occurred from the Companions in their act of shrouding the Messenger of Allah ﷺ

With a Yemeni cloak. The hadith can be found in the Sahihayn as recorded on the authority of 'A'ishah ﷺ. That act is due to the custom that had been transmitted down from the time of the Messenger of Allah ﷺ.

As for the permissibility of kissing the dead, the proof for that is the act of the Messenger of Allah ﷺ, he kissed Uthman bin Mazhuun ﷺ when he died. The hadith was recorded by Ahmad, Ibn Majah, and At-Tirmidhi, on the authority of 'A'ishah ﷺ; At-Tirmidhi authenticated it. There is another hadith recorded on the authority of 'A'ishah and Ibn Abbas ﷺ that Abu Bakr ﷺ kissed the Messenger of Allah ﷺ after his death. As for the assertion that it is upon the sick person to have a good thought about his Lord, the proof for that are the several Ahadith that have come over that issue. An example of which is the hadith that forbids a dying person not to die except with a good thought about his Lord [The Almighty], so also is the hadith of the person whom the Messenger of Allah ﷺ visited and enquired from:

كَيْفَ تَجِدُكَ

How are you feeling in your soul?

The man replied:

أَرْجُو اللَّهَ وَأَخَافُ ذُنُوبِي

I hope for the best from Allah and I fear for my sins.

The Messenger of Allah ﷺ then said:

مَا اجْتَمَعا فِي قَلْبِ امْرِئٍ فِي مِثْلِ هَذَا المَوطِنِ إِلاَّ دَخَلَ الجَنَّة

The two (that is, hoping for the best from Allah, the Almighty, and fearing for ones sins) will not come together in a persons heart at a like this point except that such person enters Jannah.

Or as said by the Messenger of Allah ﷺ.

As for the requirement of repentance, there are several Verses of the Qur'an and authentic Ahadith; the place might not be suitable to have elaborate discussion on this. However, there is a hadith in the Sahihayn that the Messenger of Allah ﷺ said:

إِنَّ اللَّهَ تَعَالَى يَفْرَحُ بِتَوْبَةِ عَبْدِهِ

Verily Allah, the Almighty, is happy about the repentance of His slave.

So also is this statement that the door of repentance is open not closed.

As for the requirement that the dying person should free himself from all burdens, that is compulsory on him. Therefore, returning all the rights of people upon him such as debts, trusts, seized property, and other than those is very imperative, it is not possible for him to return them at the time, the least he can do is to make a detailed testamentary statement (Al-Wasiyyah) about them. There has come the command as to making a testamentary statement; that it is not for anyone to spend a night except that he should have his testament by his head as it has come in authentic reports from the Messenger of Allah ﷺ.

باب غسْل الميِّت

Chapter 3.2 Washing the Dead

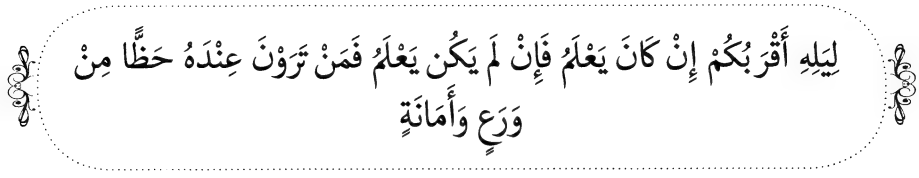


It is imperative that the corpse of a dead Muslim is washed; a duty to be carried out by the living Muslims. This duty is best carried out by the closest relations to the demise if they are of the same sex; it is also better that one of the spouses takes care of the other. The washing is three or five times or more than with water and nabk, and at the end with camphor. The washing should start from the right limbs. A martyr is not to be washed.

Explanation:

I say: As for the obligation of washing a dead Muslim by the living, the proof for that is the consensus that has come over that as Al-Mahdi stated in Al-Bahr and Al-Nawawi (in Al-Majmuu). The point of reliance of this consensus are the Ahadith commanding that the dead should be washed, and the enjoinment of the Messenger of Allah ﷺ regarding it – like his that the fellow who was knocked down by his camel should be washed, so his command ﷺ that his daughter, Zaynab, should be washed. The two narrations can be found in the Sahih.

As for the assertion that the closest relation better carries out the act of washing, the proof for that is the hadith that goes thus:


لِيَلِهِ أَقْرَبُكُمْ إِنْ كَانَ يَعْلَمُ فَإِنْ لَمْ يَكُنْ يَعْلَمُ فَمَنْ تَرَوْنَ عِنْدَهُ حَظًّا مِنْ وَرَعٍ وَأَمَانَةٍ

The closest person to any of you should manage his affairs if he has the knowledge, if he does not have the knowledge then make a choice of whoever is better devoted and trustworthy.

The hadith was recorded by Ahmad and At-Tabarani; there is however Jabir Al-Jufi in its chain.

Even if the hadith above is not suitable as a proof, the fact remains that the close relations have advantage and added affection and compassion that can bring a complete care (for the dead when he is being washed). There is no doubt as to Saying that this view takes preponderance due to the knowledge the close one will have regarding what will be required in washing the dead.

As for the assertion that either of the spouses better wash the other when one of them dies, the proof for that is the statement of the Messenger of Allah ﷺ to 'A'ishah ﷺ as goes thus:

مَا ضَرَّكِ لَوْ مِتِّ قَبْلِي فَغَسَّلْتُكِ وَكَفَّنْتُكِ ثُمَّ صَلَّيْتُ عَلَيْكِ وَدَفَنْتُكِ

Does it pain you if you were to die before me that I wash you, shroud you then observe the funeral prayer over you and bury you.

Ahmad, Ibn Majah, Ad-Darimi, Ibn Hibban, Al-Daraqutni and Al-Bayhaqi recorded the hadith; there is Muhammad bin Ishaq in its chain, who is deficient, but he was not the only person that reported the hadith, there is a supportive evidence for him in what Salih bin Kisan reported. The basis of the hadith is in Sahih Al-Bukhari in this wording:

ذَاكِ لَوْ كَانَ وَأَنَا حَيٌّ فَأَسْتَغْفِرُ لَكِ وَأَدْعُو لَكِ

That for you, if I were to be alive, I shall ask forgiveness of Allah for you and I will supplicate to Allah for you.

'A'ishah ﷺ once said: If I was able to come back quickly from a need that preoccupied me, none would have washed the Messenger of Allah ﷺ except his wives.

Ahmad, Abu Dawud, and Ibn Majah recorded the above narration.

It was the wife of As-Siddiq, Asma (bint Umays), ﷺ, that washed him as was earlier mentioned under the topic of the legality of taking birth for the person who washed a dead person. What Asma – may Allah be pleased with her – did was to the knowledge of the Companions and they did not criticize her for it.

It was also Ali bin Abi Talib that washed Fatimah ﷺ as was recorded by Al-Shafi'i, Al-Daraqutni, Abu Nuaym, Al-Bayhaqi with a sound chain. That is also the opinion of the majority of the scholars.

As for the assertion that the washing can be three, five or more than, with water and nabk, the proof for that is the statement of the Messenger of Allah ﷺ to the women washing his daughter, Zaynab, ﷺ, he ﷺ told them:

اغْسِلْنَهَا ثَلَاثًا أَوْ خَمْسًا أَوْ أَكْثَرَ مِنْ ذَلِكَ إِنْ رَأَيْتُنَّ بِمَاءٍ وَسِدْرٍ وَاجْعَلْنَ فِي الْآخِرَةِ كَافُورًا

Wash her three, five times or more than that, if you feel so, with water and nabk, and make the last wash be with camphor.

The hadith is the Sahihayn; recorded on the authority of Umm 'Atiyyah ﷺ.

In another version that can be credited to the authors of the Sahihayn, the hadith goes thus:

اغْسِلْنَهَا وِتْراً ثَلَاثًا أَوْ خَمْسًا أَوْ سَبْعًا أَوْ أَكْثَرَ مِنْ ذَلِكَ إِنْ رَأَيْتُنّ

Wash her in odd number of times: three, five, seven times or more than, that if you feel so.

This narration thus indicates that the number time for the washing is left to the people doing it.

As for the requirement to start the washing from the right limbs, the proof for that is the statement of the Messenger of Allah ﷺ in the hadith recorded on the authority of Umm Atiyyah ﷺ that he ﷺ said:

ابْدَأْنَ بِمَيَامِنِهَا وَمَوَاضِعِ الْوُضُوءِ مِنْهَا

Start (her washing) from her right limbs and the spots of ablution from it.

As for the assertion that a martyr is not washed, that is due to what is established from the Messenger of Allah ﷺ in his abandonment of washing the martyrs of Battle of Uhud and other ones. There is no report stating that he ﷺ washed a Martyr; that is the view of the majority of the scholars.

As for other people who are also referred to as martyrs like someone who died of an epidemic disease, a person who died of a stomach problem, a woman who

died as a result of child birth, and their likes; the author of Al-Bahr mentioned a consensus as to the fact that they are to be washed.

باب تكْفِين الميِّت

Chapter 3.3 Shrouding the Dead



It is obligatory to shroud the dead with what can cover him; even if the dead one does not possess except that. There is nothing against getting more cloths for the shrouding but there should not be extravagance. As for a martyr, he is to be shrouded in the cloth wherein he was killed. It is meritorious to perfume the corpse or the shroud.

Explanation:

I say: As for the requirement to shroud him with what can cover his body, the proof for that is the command from the Messenger of Allah ﷺ with regard to doing good to the dead one in the manner of shrouding; that is what comes in this hadith:

إِذَا كَفَّنَ أَحَدُكُمْ أَخَاهُ فَلْيُحَسِّنْ كَفَنَهُ

When any of you shrouds his brother, let him do his shrouding well.

The report can be found in Sahih Muslim and some other works in the hadith recorded on the authority of Abu Qatadah ﷺ. It is a fact that a shroud that does not cover the corpse is not a good one.

As for the assertion that the corpse must be shrouded even if he does not possess any other property other than cloth to be used in shrouding him, that is due to the command from the Messenger of Allah ﷺ as regard the death of Musab bin Umayr ﷺ. He ﷺ commanded that Musab should be shrouded in his only stripped cloth as recorded in the Sahihayn and some other works in the hadith narrated on the authority of Khabbab ibn al-Aratt ﷺ.

As for the assertion that there is nothing against making use of many shrouds, if possible, but with no extravagance, the proof for that is what occurred from the Messenger of Allah ﷺ as regard shrouding of his daughter, Zaynab ﷺ. In the process, the Prophet ﷺ offered the women washing her cloths after cloths from behind the door; he ﷺ (first) offered them a loin cloth, then a hard cloth, then a large gown, then a less loose cloth; she was thereafter wrapped in another cloth.

Ahmad and Abu Dawud[11] recorded the hadith on the authority of Layla bint Qaanif Ath-Thaqafiyyah ﷺ.

The Messenger of Allah ﷺ himself was shrouded in three white pieces of cloth made in Yemen, the pieces of cloth were new, there were no over-garment nor turban included in them. The hadith can be found in the Sahihayn.

Abu Dawud also recorded another hadith on the authority of Ali bin Abi Talib ﷺ that the Messenger of Allah ﷺ said:

لَا تُغَالُوْا فِي الْكَفَنِ فَإِنَّهُ يُسْلَبُ سَرِيعًا

Do not be extravagant in shrouding the dead because it wears off from the dead so quickly.

It is also better that the shrouding is done with white cloth due to this hadith:

الْبَسُوا مِنْ ثِيَابِكُمْ الْبَيَاضَ فَإِنَّهَا مِنْ خَيْرِ ثِيَابِكُمْ وَكَفِّنُوا فِيهَا مَوْتَاكُمْ

Put on white cloth among your cloths, indeed it is among your best clothes, and shroud your dead ones with it.

The hadith was recorded by Ahmad, Abu Dawud, Ibn Majah, At-Tirmidhi (who authenticated it), Al-Shafi'i, Ibn Hibban, Al-Hakim, Al-Bayhaqi and it was authenticated by Ibn Al-Qattan.

There are other Ahadith with the same meaning as the hadith above; such as the Ahadith recorded on the authority of Imran, Samurah, Anas, Ibn Umar and Abu Ad-Darda ﷺ.

As for the assertion that the martyr would be shrouded in the cloth wherein he was killed, that was what the Messenger of Allah ﷺ did with respect to the martyrs of the battle of Uhud.

Ahmad, Abu Dawud, and Ibn Majah recorded on the authority of Ibn Abbas ﷺ who said: the Messenger of Allah ﷺ commanded on the day of battle of Uhud that steel and skin be removed from the martyrs; then he ﷺ said:

11 Weak hadith.

اِدْفِنُوهُمْ بِدِمَائِهِمْ وَثِيَابِهِمْ

Bury them with their blood and clothes.

Ahmad also recorded on the authority of Abdullah bin Thalabah ﷺ that the Prophet ﷺ said on the day of Uhud:

زَمِّلُوهُمْ فِي ثِيَابِهِمْ

Wrap them up with their clothes.

As for the requirement of perfuming the corpse and the shroud, the proof for that is the hadith recorded on the authority of Jabir ﷺ as found with Ahmad, Al-Bayhaqi and Al-Bazzar with a chain whose men are men of authentic narrations; he said: The Messenger of Allah ﷺ said:

إِذَا أَجْمَرْتُمُ الْمَيِّتَ فَأَجْمِرُوهُ ثَلَاثًا

When you perfume the dead, do so three times.

Another poof is the statement of the Messenger of Allah ﷺ in the incident of the pilgrim that was knocked down by his camel:

وَلَا تَمَسُّوهُ بِطِيبٍ

And do not perfume him.

The hadith is found in the Sahih as recorded on the authority of Ibn Abbas ﷺ. What that implies is that other than a pilgrim can be perfumed; as that is indicated by the reason he ﷺ gave that:

فَإِنَّهُ يُبْعَثُ مُلَبِّياً

Indeed he will be raised up on the Day of Resurrection doing al-Talbiyah like someone performing Hajj.

باب صَلاة الجَنازة

Chapter 3.4 Funeral Prayers



It is obligatory to observe prayer over the dead person. If the dead person is a man, the Imam will stand next to his head, but if a woman he will stand by her middle. He will make four or five takbiraat over the dead person, he will recite the Opening Chapter and another chapter after the First Takbirat; he will make recommended supplications between the rest of the takbiraat. Prayer should not be observed over someone who stole from the war booty, so also a person who is guilty of suicide, an unbeliever, and a martyr. Prayer can be observed over the grave and in absentia of the dead.

Explanation:

I say: Observance of funeral prayer over the dead ones is established clearly and unquestionably from the act of the Messenger of Allah ﷺ and his Companions. Though the prayer remains a communal obligation because it used to occur that the funeral prayer of several dead persons would be observed in the lifetime of the Messenger of Allah ﷺ while he would not know. The example of that was the case of the black woman who used to take care of the masjid of the Messenger of Allah ﷺ; the Messenger of Allah ﷺ was not aware of her death until after she had been buried. He ﷺ said: 'Why didn't you inform me?

The hadith can be found in the Sahih.

The Messenger of Allah ﷺ would not observe prayer on whoever had some debt over him; he would rather ask the Companions to pray over him.

As for the assertion that the Imam will stand by the head of dead male and by the middle of a dead female, the proof for that is the hadith of Anas bin Malik رضي الله عنه. He observed a funeral prayer over a man and stood by his head, when the corpse was taken up, the corpse of a woman was brought, and he equally prayed over her but stood by her middle. He was asked about that: 'Was that how the Messenger of Allah ﷺ used to stand where you stood in the case of the man and in the case of the woman? He replied in the affirmative. Ahmad, Abu Dawud, At-Tirmidhi – who authenticated it –, and Ibn Majah recorded it. The wording of Abu Dawud goes thus: Was that how the Messenger of Allah ﷺ used to pray over the dead; this your manner of observance of the prayer whereby you said four Takbirat, stood by the head of the dead male and by Ajeezah (the posterior) of the dead female? Anas رضي الله عنه replied in the affirmative.

In the Sahihayn from the hadith recorded on the authority of Samurah ﷺ. He said: 'I observed a funeral prayer with the Messenger of Allah ﷺ where he prayed over a woman who died in her post-partum period, he ﷺ stood by her middle in the course of the Prayer.

The report above is not in conflict with the report that says Anas ﷺ stood by Ajeezah of a dead female, because Ajeezah can still refer to the middle part of a woman. However, the difference of opinion over the issue is well-known but this is the truth.

As for the assertion that the Takbirat can be four or five, that is due to proofs that have come over that.

As for the four Takbirat, that is established via a report that has numerous routes, reported by a number of the Companions of the Messenger of Allah ﷺ; among whom were Abu Hurairah, Ibn Abbas, Jabir, Uqbah bin Aamir, Al-Bara bin Azib, Zaid bin Thabit, Ibn Mas'ud, and others; ﷺ.

As for five Takbirat, it is established in the Sahih in the hadith recorded on the authority of AbdurRahman bin Abi Laylah ﷺ who said: Zaid bin Arqam ﷺ used to make four Takbirat over our dead ones. He once observed five over a particular dead person then I asked him concerning it. He replied that the Messenger of Allah ﷺ used to do same. The report was recorded by Muslim, Ahmad, and the Collectors of Sunan.

Ahmad also recorded a hadith on the authority of Hudhayfah ﷺ that he led a funeral prayer one day and made five Takbirat, after which he turned back and said: 'I neither forgot nor made a mistake, but I made the Takbirat as the Prophet ﷺ did over a dead person. There is Yahya Al-Jabiri in its chain; he is weak.

The Companions and those who came after them differed as to the number of Takbirat that could be made when observing the funeral prayer. The majority of them are of the view that it they are four while some of the Companions and the people that came some after them had the view that they are five. Al-Qadi Iyadh ﷺ said: The Companions differed in that respect between three and nine Takbirat.

Ibn Abdil-Barr ﷺ said: 'There came a consensus thereafter that it is four Takbirat; the jurists and muftis of the (Islamic) cities agreed on its being four Takbirat as it has come in the authentic Ahadith. Thus whatever is beyond that, with them, is an anomaly that will not be considered. End of quote.

This claim is rejected. The difference of opinions over the matter is well-known from the Companions up till this time. There is no point in saying five Takbirat cannot be made after it has come via authentic route; an addition which does not have a negative effect. What can downplay that is if what Ibn Abdil-Barr

﴿ﷺ﴾ recorded in Al-Istidhkaar through Abu Bakr Ibn Sulayman bin Abi Athmah from his father is authentic that the Prophet ﴿ﷺ﴾ used to observe four, five, seven, and eight Takbirat over the dead until the Negus (of Abyssinia). On that occasion, he ﴿ﷺ﴾ came out and made four Takbirat then he remained on making four Takbirat until Allah the Almighty took his life ﴿ﷺ﴾.

However, the Prophet's remaining on four Takbirat does not abrogate what came from him that he used to make five Takbirat so far he did not make a statement indicating that the latter has been abrogated.

At-Tabarani ﴿ﷺ﴾ recorded in Al-Awsat on the authority of Jabir ﴿ﷺ﴾, linked to the Messenger of Allah ﴿ﷺ﴾; that he ﴿ﷺ﴾ said:

صَلُّوا عَلَى مَوْتَاكُمْ بِاللَّيلِ وَالنَّهَارِ وَالصَّغِيرِ وَالكَبِيرِ وَالدَّنِيءِ وَالأَمِيرِ أَرْبَعاً

Pray over your dead ones in the night and day whether young or old, whether the lowly ones or the rulers; make the Takbirat four

There is Amr bin Hisham Al-Bayruuti in the chain; he lonely reported the hadith from Ibn Lahiah. Nothing will be more right than to say that such hadith is not authentic.

Al-Bukhari ﴿ﷺ﴾ recorded on the authority of Ali bin Abi Talib ﴿ﷺ﴾ that he made six Takbirat over Sahl bin Hunayf ﴿ﷺ﴾ and said that he did so because Sahl fought in the Battle of Badr. Said bin Mansuur also reported from Al-Hakam bin Utaybah that he said that they used to make five, six or seven Takbirat on the veterans of Badr.

As for the assertion that he would recite Surah Al-Fatihah and any other Surah with it in the First Unit, the proof for that is the hadith recorded on the authority of Ibn Abbas ﴿ﷺ﴾. The hadith is found with Al-Bukhari and the Collectors of Sunan that he (Ibn Abbas ﴿ﷺ﴾) observed a funeral prayer over a dead person and recited Surah Al-Fatihah therein, then later said: '[I did so] so in order to teach you that it is part of the Sunnah.

The wording of An-Nasai goes thus: He recited Surah Al-Fatihah and a chapter; he did so loudly. When he finished he said: It is Sunnah and it is the truth.

Al-Shafi'i ﴿ﷺ﴾ recorded too in his Musnad on the authority of Abu Umamah bin Sahl who was told by a man among the Companions of the Prophet ﴿ﷺ﴾ that it is Sunnah that when observing the funeral prayer that the Imam make the Takbir then recite Surah Al-Fatihah after the First Takbirat silently to

himself, then seek benedictions on the Prophet ﷺ and thereafter make brief supplications for the dead; he will do so in the rest of the Takbirat, but will not recite anything (of the Qur'an) in those Takbirat. He will then make the salutation silently.

The author of Fathul-Bari said the chain of the above report is authentic.

Abdul Razzaq and An-Nasai also recorded the report but without this statement: ...after the First Takbirat, nor his statement: Then he will make the salutation silently.

As for the recommended supplications, some of them are recorded by Ahmad, At-Tirmidhi, Abu Dawud and Ibn Majah on the authority of Abu Hurairah ﷺ who said: The Prophet ﷺ would make this supplication whenever he prayed over a dead person:

اللَّهُمَّ اغْفِرْ لِحَيِّنَا وَمَيِّتِنَا وَشَاهِدِنَا وَغَائِبِنَا وَصَغِيرِنَا وَكَبِيرِنَا وَ ذَكَرِنَا وَأُنْثَانَا اللَّهُمَّ مَنْ أَحْيَيْتَهُ مِنَّا فَأَحْيِهِ عَلَى الْإِسْلَامِ وَمَنْ تَوَفَّيْتَهُ مِنَّا فَتَوَفَّهُ عَلَى الْإِيمَانِ

O Allah, forgive the living among us and the dead, the present amongst us and the absent, the young amongst us and the old, the male amongst us and the female; O Allah, whomever You cause to be alive amongst us let him be alive upon Islam and whomever You cause to die, cause him to die upon faith.

Abu Dawud and Ibn Majah have an addition:

اللَّهُمَّ لَا تَحْرِمْنَا أَجْرَهُ وَلَا تُضِلَّنَا بَعْدَهُ

O Allah, do not deprive us of the rewards and do not mislead us after him.

An-Nasai and Ibn Hibban also recorded the hadith; Al-Hakim said there is a supportive report that is authentic on the authority of 'A'ishah that is similar to the above report.

This supportive report was recorded by At-Tirmidhi and he faulted it with the presence of Ikrimah bin Ammar in its chain.

Muslim and other collectors of hadith also recorded a hadith on the authority of Awf bin Malik who said that he heard the Prophet ﷺ said:

اللَّهُمَّ اغْفِرْ لَهُ وَارْحَمْهُ وَعَافِهِ وَاعْفُ عَنْهُ وَأَكْرِمْ نُزُلَهُ وَوَسِّعْ مُدْخَلَهُ
وَاغْسِلْهُ بِالْمَاءِ وَالثَّلْجِ وَالْبَرَدِ وَنَقِّهِ مِنْ الْخَطَايَا كَمَا يُنَقَّى الثَّوْبُ
الْأَبْيَضُ مِنْ الدَّنَسِ وَأَبْدِلْهُ دَارًا خَيْرًا مِنْ دَارِهِ وَأَهْلًا خَيْرًا مِنْ أَهْلِهِ
وَزَوْجًا خَيْرًا مِنْ زَوْجِهِ وَأَدْخِلْهُ الْجَنَّةَ وَقِهِ فِتْنَةَ الْقَبْرِ وَعَذَابَ النَّارِ

O Allah! Forgive him, show him mercy, pardon him, honour his landing, widen his entrance, wash him with water, ice, and cold water. Cleanse him from his sins as white cloth are cleansed from dirt, place him in a better abode than his abode, bless him with a family better than his family and a wife better than his wife; make him enter Jannah, save him from the punishment of the grave and that of the fire.

As for the assertion that a person that stole from the war booty will not to be prayed over, that is due to the Prophet's refusal in the battle of Khaybar to pray over the man that stole from the war booty as was recorded by Abu Dawud, An-Nasai and Ibn Majah.

As for the person who committed suicide, the proof for that is the hadith recorded on the authority of Jabir bin Samurah as found with Muslim and the Collectors of Sunan that a man killed himself with an arrow blade and the Prophet ﷺ did not pray over him.

As for an unbeliever, that is what is known from the Messenger of Allah ﷺ that he never prayed over an unbeliever. Qur'an is very explicit on that; Allah the Almighty says:

وَلَا تُصَلِّ عَلَىٰ أَحَدٍ مِّنْهُم مَّاتَ أَبَدًا وَلَا تَقُمْ عَلَىٰ قَبْرِهِۦٓ ۖ إِنَّهُمْ كَفَرُوا
بِاللَّهِ وَرَسُولِهِ وَمَاتُوا وَهُمْ فَاسِقُونَ

And never (O Muhammad) pray (funeral prayer) over any of them (hypocrites) who dies, nor stand at his grave. Certainly, they disbelieved in Allah and His Messenger, and died while they were disobedient (to Allah and His Messenger). [At-Tawbah: 84]

As for the martyr, there are conflicting reports as regard that. It has however

come authentically in Sahih Al-Bukhari on the authority of Jabir that the Prophet ﷺ did not pray over the martyrs of Uhud. The Collectors of Sunan also recorded it. Ahmad, Abu Dawud, At-Tirmidhi, and Al-Hakim also recorded on the authority of Anas that the Messenger of Allah ﷺ did not pray over them. I delved so much on this topic in Sharh Al-Muntaqaa and I brought different reports and the difference of opinions of the people of knowledge. Attention should be turned to it. The arena is one of the battle areas of the people of knowledge.

As for the assertion that the prayer can be observed over the grave and in absentia of the dead person, the proof for that is the hadith that he ﷺ came to a fresh grave and prayed over it; the Companions aligned their rows behind him and he made four Takbirat. The hadith can be found in the Sahihayn in the hadith of Ibn Abbas ﷺ. So also was the case of the woman who used to take care of the masjid. The hadith can also be found in the Sahihayn and other works [on the authority of Abu Hurairah ﷺ, he prayed over the grave of the mother of Sad and that was a month after her death; it was recorded by At-Tirmidhi.

The Prophet and his Companions also prayed over the Negus as was recorded in the Sahihayn and some other books on the authority of Jabir and Abu Hurairah ﷺ; this Negus had died in his country, Abyssinia. The Prophet ﷺ prayed over him in Madinah. The difference of opinion as regard praying over the grave and praying over a dead person in absentia is well-known. There is no reliable proof for the view that says the opposite.

باب المَشْي بالجَنَازة

Chapter 3.5 Walking in Funeral



Walking while carrying the corpse should be done swiftly, so also the walking behind it, and carrying the corpse is part of the Sunnah. Those in front of the corpse and behind it are equal in status. But it is discouraged to go with it riding, and it is forbidden to announce the death (in the way of the people of ignorance), as it is also forbidden to wail over it or follow it with fire or tear off one's clothes in grieve, or rain curses of woes or ruin upon oneself. Those who follow the funeral should not sit until the corpse has been laid down. Standing for it (while carrying) had been abrogated.

Explanation:

I say: As for the assertion that walking should be done swiftly, the proof for that is the hadith recorded on the authority of Abu Bakrah ﷺ as found with Ahmad, An-Nasai, Abu Dawud and Al-Hakim. He (Abu Bakrah) said: We used to walk alongside with the Messenger of Allah ﷺ swiftly behind the corpse.

Al-Bukhari recorded in his Tarikh that he said: The Prophet ﷺ walked very swiftly on the day Sad bin Muadh died such that our footwear cut off while walking.

Al-Bukhari, Muslim, and some other collectors recorded on the authority of Abu Hurairah ﷺ who said the Messenger of Allah ﷺ said:

أَسْرِعُوا بِالجَنَازَةِ فَإِنْ كَانَتْ صَالِحَةً قَرَّبْتُمُوهَا إِلَى الخَيْرِ وَإِنْ كَانَتْ غَيْرَ ذَلِكَ فَشَرٌّ تَضَعُونَه عَنْ رِقَابِكُمْ

Be swift while carrying the corpse; if the dead were a righteous person, you have quickly taken him closer to goodness, and if he were other than that, you have taken an evil off your necks.

The majority of the scholars are of the opinion that hastening behind the corpse is recommended. Ibn Hazm talked about its being obligatory. But some people of knowledge are of the view that saying it is recommended is the middle-course due to the hadith recorded on the authority of Abu Musa ﷺ who said: A funeral swiftly went pass the Messenger of Allah ﷺ wherein he said: Be

gentle. The hadith was recorded by Ahmad, Ibn Majah, Al-Bayhaqi and there is a weak narrator in the chain.

At-Tirmidhi and Abu Dawud recorded a hadith on the authority of Ibn Mas'ud ﷺ that they asked the Messenger of Allah ﷺ as regard walking behind a funeral then he said:

مَا دُونَ الخَبَبَ أَيّ الرَّمَل فَإِنْ كَانَ خَيْراً عَجَّلْتُمُوهُ وَإِنْ كَانَ شَرًّا فَلا يُبَعَّد إِلَّا أَهْلُ النَّار

Make the movement less than trots; if the corpse were a righteous person then you are forwarding him to what is good and if he were an evil corpse none should be taken way except the people of fire.

There is an unknown narrator in the chain.

It will not be hidden from you that the hadith recorded on the authority of Abu Musa ﷺ is not suitable as a proof taken that there is no other narration that contradicts it. What should we say now that there is what opposes it in the Sahihayn; a report that comes like a command.

As for the hadith of Ibn Mas'ud ﷺ, it does not rule out being swift because al-Khabab (trotting) is a form of running and what is less than it is an act of hasting.

As for the assertion that following the funeral is Sunnah, that is what is apparent. Indeed the Messenger of Allah ﷺ used to walk behind funerals alongside his Companions. That is deduced from the Ahadith that have earlier been mentioned about following the funeral. So also the Ahadith that came over the persons that stay in the front or behind the funeral and the hadith of Abu Hurairah ﷺ that is established in the Sahih wherein the Messenger of Allah ﷺ said:

مَن اتَّبَعَ جَنَازَةَ مُسْلِمٍ إِيْمَاناً وَاحْتِسَاباً...

Whoever follows the funeral of a Muslim with faith and in hope for rewards...

As for the assertion that carrying the corpse is Sunnah, the proof for that is the hadith recorded on the authority of Ibn Mas'ud ﷺ who said: 'A corpse

should beCarried by those who follow it in all the sides of the bier; that is the Sunnah. If anyone wishes thereafter let him volunteer, and if he wishes he may withdraw. The report is recorded by Ibn Majah, Abu Dawud At-Tayalisi, Al-Bayhaqi; a report that goes through Abu Ubaydah bin Abdillah bin Masuud from Abdullah bin Masud.

Under this section, there are narrations from a number of the Companions strengthen one another, and they do not only indicate the legality of carrying the corpse alone, rather that it is Sunnah.

As for the assertion that the people in front of the corpse and those behind it are of equal status, the proof for that is what has authentically come in Sahih Muslim and some other works that the Companions walked around the funeral of Ibn Ad-Dahdaah.

Ahmad also recorded, so also Abu Dawud, An-Nasai and it was authenticated by At-Tirmidhi [so also Ibn Hibban, Al-Hakim who said it is authentic on the criteria of Al-Bukhari]; a hadith on the authority of Al-Mughirah ﷺ that the Prophet ﷺ said:

الرَّاكِبُ خَلْفَ الجَنَازَةِ والمَاشِي أَمَامَهَا قَرِيباً مِنْهَا عَن يَمِينِهَا أَو عَنْ يَسَارِهَا

A rider should ride behind the corpse and a walker in its front, or close to it in its right hand side or left hand side.

In the wording of Abu Dawud, it goes thus:

وَالمَاشِي يَمْشِي خَلْفَهَا وَأَمَامَهَا وَعَنْ يَمِينِهَا وَيَسَارِهَا قَرِيباً مِنْهَا

A walking person walks behind it or in its front, or on its right-hand side and left-hand side close to it.

In the wording of Ahmad, An-Nasai and At-Tirimdhi, it goes thus:

الرَّاكِبُ خَلْفَ الجَنَازَةِ وَالمَاشِي حَيْثُ شَاءَ مِنْهَا

The rider follows the corpse behind it while someone walking walks wherever he may feel around it.

Ahmad and the Collectors of Sunan, so also Al-Daraqutni, Al-Bayhaqi and Ibn Hibban, who authenticated it, all recorded a hadith on the authority of Ibn Umar ﷺ that he saw the Prophet ﷺ, Abu Bakr and Umar ﷺ all walking in front of a funeral. Ibn Hibban graded the report authentic.

Some people of knowledge are of the view that walking in front of the funeral is what is better while some are of the view that walking behind is better. The truth however is that both acts are on equal footing. The report that the Messenger of Allah ﷺ walked in front and behind the funeral does not contradict this view; each act is of the same level because following the funeral will either be in its front or behind or on it two sides (right and left). The Prophet ﷺ had guided to all that as was earlier mentioned; he ﷺ directed to all that have been mentioned.

As for the assertion that it is detested to mount a ride in a funeral procession, the proof for that is the hadith of Thawban ﷺ. He said: we went out with the Messenger of Allah ﷺ and he saw a people riding, the Messenger of Allah ﷺ then said:

أَلَا تَسْتَحْيُون إِنَّ مَلائِكَةَ اللَّهِ عَلَى أَقْدَامِهِم وأَنْتُم عَلَى ظُهُورِ الدَّوَابِ

Are you not ashamed; the angels are on their heels (walking) while you are on your rides.

Ibn Majah and At-Tirmidhi recorded it.

Abu Dawud also recorded another report also on the authority of Thawban ﷺ that the Messenger of Allah ﷺ was brought a beast to mount while he was in a funeral procession, and he refused to mount it. After the procession, he was brought a beast and he mounted it. He was asked while he did that and he ﷺ replied:

إِنَّ المَلائِكَةَ كَانَتْ تَمْشِي فَلَمْ أَكُنْ لَأَرْكَبُ وَهُمْ يَمْشُونَ فَلَمَّا ذَهَبُوا رَكِبْتُ

Verily the angels were walking so I could not have ridden while they walked but when they left I rode.

The Messenger of Allah ﷺ went to funeral procession of Ibn Ad-Dahdaah ﷺ walking but came back on a horse as was mentioned in the hadith recorded on the authority of Jabir bin Samurah ﷺ as found with At-Tirmidhi who said it is an authentic report. What has earlier been mentioned in the statement of the Messenger of Allah ﷺ that a rider should ride behind the corpse does not contradicts the discouragement of mounting a ride in a funeral procession. This is because that report could have come to express a mere permissibility while the act in itself is detested, or the hadith could be interpreted to mean that the rider should be very far behind the funeral such that he will not look like someone following the funeral.

As for the prohibition of announcing the death (in the way of the people of ignorance), the proof for that is the hadith recorded on the authority of Hudhayfah as found with Ahmad, Ibn Majah, and At-Tirmidhi, who authenticated it, that the Prophet ﷺ forbade announcing the death. So also is the hadith recorded on the authority of Ibn Mas'ud from the Prophet that he ﷺ said:

إِيَّاكُمْ وَالنَّعْيَ فَإِنَّ النَّعْيَ عَمَلُ الجَاهِلِيَّة

Be wary of announcing the death for such an act is from the acts of the Period of Ignorance.

At-Tirmidhi recorded; there is Abu Hamzah Maymun Al-Awar in the chain of the hadith; he is not a strong reporter. There are several other Ahadith under the section.

As for the prohibition of wailing over the death, the proof for that is the hadith that goes thus:

مَنْ نِيحَ عَلَيهِ يُعَذَّبُ بِمَا نِيحَ عَلَيهِ

Whoever is wailed upon shall be punished for the wailing done upon him.

The hadith can be found in the Sahihayn and some other works on the authority of Al-Mughirah ﷺ.

It is based on the precept of wailing that the hadith that has come over the prohibition of crying over the dead would be understood; that the dead shall be punished for the cry over him.

It has come in Sahih Muslim on the authority of Ibn Umar ﷺ that the Prophet ﷺ said:

المَيِّتُ يُعَذَّبُ فِي قَبْرِهِ بِمَا نِيحَ عَلَيهِ

The dead shall be punished in his grave for been wailed upon.

Ahmad also recorded, so also Muslim a hadith on the authority of Abu Malik Al-Ashariyy ﷺ [that the Messenger of Allah ﷺ said:]

النَّائِحَةُ إِذَا لَمْ تَتُبْ قَبلَ مَوتِها تُقَامُ يَومَ القِيَامَةِ وَعَلَيهَا سِرْبالٌ من قَطِرَانٍ ودِرْعٌ مِنْ جَرَبٍ

If the bewailing woman does not repent before her death, she will be raised on the Day of the Resurrection covered with a garment of tar and a shield of scab.

The Two Shaykhs – Al-Bukhari and Muslim – and some other collectors recorded on the authority of Abu Musa ﷺ that he said: I free myself from whom the Messenger of Allah ﷺ freed himself from. Indeed the Messenger of Allah ﷺ freed himself from a wailing woman, a woman who shaves her hair, and a woman who tears up her clothes (in the time of affliction).

As for the prohibition of following the funeral with fire, tearing the clothes (in the process), raining curses of woes and ruin upon oneself, the proof for the

prohibition of all these is the hadith recorded on the authority of Abu Burdah ﷺ. He said: when the time of death of Abu Musa ﷺ approached, he gave this testament: Do not follow my corpse with an incense carrier. The people said: Did you hear anything about that? He ﷺ replied in the affirmative, that he heard it from the Messenger of Allah ﷺ. Ibn Majah recorded it and there is an unknown reporter in its chain.

The act of following the funeral with fire (and other acts mentioned in the section) has been the acts of the Period of Ignorance.

In the Sahihayn and some other works in the hadith recorded on the authority of Ibn Mas'ud ﷺ that the Prophet ﷺ said:

لَيْسَ مِنَّا مَنْ ضَرَبَ الخُدُودَ وشَقَّ الجُيُوبَ ودَعَا بدَعْوى الجَاهِلِيَّةِ

He is not part of us he that beats the cheeks, tears the clothes and wails like the time of ignorance.

As for the assertion that the person that follows a funeral will not sit until the funeral is placed down the grave, the proof for that is this hadith:

إِذَا رَأَيْتُم الجَنَازَةَ فَقُومُوا لَهَا فَمَن اتَّبعَهَا فَلا يَجْلِس حَتَّى تُوضَعَ

When you see a funeral stand up for it; and whoever follows it should not sit until it is placed down.

The hadith above can be found in the Sahihayn and some other works; it was recorded on the authority of Abu Sa'id ﷺ.

Abu Dawud also recorded a similar hadith on the authority of Abu Hurairah ﷺ.

There are several authentic reports indicating that one should stand for a funeral when it passes; an example of such Ahadith is this:

إِذَا رَأَيْتُم الجَنَازَةَ فَقُومُوا لهَا حَتَّى تُخَلِّفَكُمْ أو تُوضَعَ

When you see a funeral stand up for it until it passes you or it is placed down.

The hadith can be found in the Sahihayn and other works; it was recorded on the authority of Ibn Umar ﷺ and others.

Muslim also recorded a hadith on the authority of Ali bin Abi Talib ﷺ who said that the Messenger of Allah ﷺ would stand up for funerals then he began to sit, and then commanded us to sit. The hadith is recorded by Ahmad, Abu Dawud, Ibn Majah, and Ibn Hibban.

Abu Dawud, At-Tirmidhi, Ibn Majah, and Al-Bazzar also recorded a hadith on the authority of Ubadah bin As-Saamit that when the Prophet ﷺ used to stand for funeral, a Jew said: 'This is what we (the Jews) do too.' Then the Prophet ﷺ directed the Muslims to sit afterwards and oppose the Jews. But there is Bishr bin Abi Rafi in the chain of the report; he is not a strong reporter [as was said by At-Trimidhi; Al-Bazzar said that Bishr single-handedly reported it and he is weak.

All what we have said indicates that standing up for a funeral when it passes is Abrogated but as for the person who follows it, the command that he should not sit until it is placed down grave remains effective. Al-Qadi Iyadh ﷺ said: A number of the Predecessors bore this view that the matter has been abrogated by the hadith of Ali ﷺ.

باب دفْن الميِّت

Chapter 3.6 Burying the Dead



It is obligatory to bury the dead where it will become safe from carnivores. There is nothing wrong with making a straight grave but a corner grave is better. The dead should be taken into the grave from the edge of the grave and it should be placed on his right hand side facing the Qiblah. It is recommended that all those who are present should throw some three handfuls of sand unto the corpse. The grave is not to be raised above the palm's length. Visiting the dead is legal. The visitor will have to stand facing the Qiblah. It is forbidden to take graves as masjids; it is also forbidden to put light at graves or to sit over it. So also it is forbidden to curse the dead. Condolence is legal, so also providing food to the bereaved.

Explanation:

I say: As for the assertion that the copses should be buried where carnivores will not devour it and where it will not be exposed by normal erosions, there is no difference of opinion regarding that with the people of knowledge. It is what is ordinarily known and established in the Shari'ah. The Messenger of Allah ﷺ said:



اِحْفِرُوا وَأَعْمِقُوا وَأَحْسِنُوا

Dig graves (for your dead ones), make the graves deep and do it well.

An-Nasai and At-Tirmidhi that recorded it, it is authenticated by At-Tirmidhi.

As for the assertion that there is nothing wrong with making a straight grave but that a corner grave is better, the proof for that is the hadith of Abu Ubaydah bin Al-Jarraah ﷺ. He used to make straight graves but that Abu Talhah ﷺ used to make corner graves.

Ibn Majah recorded the hadith on the authority of Ibn Abbas ﷺ but with a weak chain. Ahmad and Ibn Majah recorded another hadith on the authority of Anas ﷺ. He said: when the Messenger of Allah ﷺ died, there was a man who used to make a corner grave and another who used to make a straight grave, the Companions said: Let us ask our Lord to choose for us; let us send

for both, whoever among them preceded here will be left to do it. Then they sent for both men and it was the one who used to make corner grave that first arrived, thus the Companions made a corner grave for the Messenger of Allah ﷺ. The chain of the hadith is fair.

The fact that the Messenger of Allah ﷺ was aware of the two men while he ﷺ was alive indicates that both practices are permissible.

As for the more correctness of making corner graves, the proof for that is the hadith of Ibn Abbas ﷺ who said that the Messenger of Allah ﷺ said:

اللَّحْدُ لنَا والشِّقُّ لغَيرِنَا

Corner grave is for us while straight grave is for other than us.

Ahmad and the Collectors of Sunan recorded the hadith above; at-Tirmidhi held it to be authentic. Ibn As-Sakan also held it to be authentic despite the presence of Abdallah ibn Amir ibn Rabi'ah in the chain of the hadith; he is a weak reporter.

Ahmad, Al-Bazzar and Ibn Majah recorded a similar hadith on the authority of Jarir ﷺ. But there is Uthman bin Umayr in the chain of that hadith too; he is also a weak reporter. That is the opinion of the majority of the scholars. Al-Nawawi ﷺ mentioned in his Sharh Muslim an agreement of the scholars on the permissibility of both straight and corner graves.

As for the assertion that the corpse is to be taken into the grave from leg, the proof for that is the hadith recorded on the authority of Abdullah bin Zaid ﷺ who took a man into the grave from the leg and said: This is Sunnah. Abu Dawud ﷺ recorded the report.

Ibn Majah ﷺ also recorded a hadith on the authority of Abu Rafi ﷺ who said: The Messenger of Allah ﷺ gently placed Sad bin Muadh in his grave.

Al-Shafi'i ﷺ recorded a hadith on the authority of Ibn Abbas ﷺ; so also Abu Bakr An-Najaad on the authority of Ibn Umar Al-Shafi'i (d) recorded a hadith onThe authority of Ibn Abbas ﷺ; so also – that the Messenger of Allah ﷺ was laid down gently in his grave from the head direction. Al-Bayhaqi has also recorded a hadith on the authority of Ibn Abbas, Ibn Mas'ud, and Buraydah ﷺ that they placed the Messenger of Allah ﷺ in his grave from the direction of the Qiblah. Al-Bayhaqi held the hadith to be weak. The report thus cannot oppose what has been reported as the Sunnah in the manner of the burial of the Messenger of Allah ﷺ.

As for the assertion that the corpse will be placed in the grave on his right hand side facing the Qiblah, this is a practice which I am not aware of any difference of opinion regarding it.

As for the recommendation of three handfuls of sand, the proof for that is the hadith recorded on the authority of Abu Hurairah ﷺ that the Prophet ﷺ observed a funeral prayer after which he came to the grave and threw three handfuls of sand on it from the direction of the head of the grave. The hadith is recorded by Ibn Majah and Abu Dawud; its chain is authentic. It is not as Abu Hatim said.

Al-Bazzar and Al-Daraqutni also recorded a hadith on the authority of Aamir bin Rabiah that the Prophet ﷺ threw three handfuls of sand upon the grave of Uthman bin Mazhuun ﷺ. There are other Ahadith under the section.

As for the assertion that the grave is not to be raised beyond palm length, the proof for that is the hadith recorded on the authority of Ali bin Abi Talib ﷺ as found with Muslim, Ahmad, and the Collectors of Sunan. He ﷺ was ordered by the Messenger of Allah ﷺ destroy the statues and level any raised grave he saw.

In Sahih Muslim and some other works, there is a statement that the Messenger of Allah ﷺ forbade erection of a building over a grave.

Said bin Mansuur and Al-Bayhaqi recorded on the authority of Jafar bin Muhammad from his father that the Messenger of Allah ﷺ wet the grave of his son, Ibrahim, (with water) then placed some pebbles over it after which he raised the grave to a palms length.

As for the legality of visiting the graves, the proof for that is the hadith that goes thus:

كُنْتُ نَهَيْتُكُمْ عَنْ زِيَارَةِ القُبُورِ فَقَد أُذِنَ لِمُحَمَّدٍ فِي زِيَارَةِ قَبْرِ أُمِّهِ
فَزُورُوهَا فإِنَّها تُذَكِّرُ الآخِرَةَ

I used to forbid you from visiting the graves; it Muhammad is now been permitted to visit the grave of his mother; so you too visit the graves, surely it will remind you of the Hereafter.

At-Tirmidhi recorded the hadith and he held it to be authentic. The hadith is also in Sahih Muslim.

So also in the Sahihayn on the authority of Abu Hurairah ﷺ a hadith similar to the one mentioned above. There are several other Ahadith under the section.

Some scholars say the legality of visiting the graves is only for men; they cite a proof in the hadith recorded on the authority of Abu Hurairah ﷺ that the Prophet ﷺ cursed the women who used to frequent the graves. The hadith is recorded by Ahmad, Ibn Majah and At-Tirmidhi who held it to be authentic. Ibn Hibbaan also authenticated it.

There is another hadith under the section recorded on the authority of Hasan bin Thabit as found with Ahmad, Ibn Majah and Al-Hakim. So also another one recorded by Ahmad and the Collectors of Sunan, Al-Hakim and Al-Bazzar with a chain that contains the presence of Salih Maulaa At-Tauamah; he is a weak narrator.

There are Ahadith prohibiting women from following funerals; thus those reports give weight to forbiddance of women from visiting the graves.

Al-Athram ﷺ recorded in his Sunan so also Al-Hakim on the authority of 'A'ishah that the Prophet ﷺ gave them respite to visit the graves.

Ibn Majah also recorded on the authority of 'A'ishah ﷺ with brevity – that the Prophet ﷺ gave respite with respect to women visiting the graves. Perhaps 'A'ishah ﷺ was referring to the respite contained in the statement of the Messenger of Allah ﷺ Then visit them... as was earlier mentioned. But there is no proof in that because as a principle, a general respite cannot conflict with a specific prohibition.

What 'A'ishah ﷺ narrated is aided by another report contained in Sahih Muslim that she ﷺ said: O Messenger of Allah, what should I say whenever I visit the grave. The Messenger of Allah ﷺ answered her:

قُولِي السَّلَامُ عَلَى أَهْلِ الدِّيَارِ مِنَ المُؤْمِنِين

Say: Peace upon the inhabitants of the abode among the believers...

Al-Hakim also recorded that Fatimah ﷺ used to visit the grave of her uncle, Hamzah, on every Jumu'ah.

The merger that can arise from the above narrations and the earlier ones is the prohibition with respect to a woman who carries out prohibited acts such as wailing and other in the course of her visit (to the graves). Thus, any woman who will not do that is permitted to visit the graves.

As for the assertion that the visitor will stand facing the Qiblah, the proof for that is the hadith that says the Messenger of Allah ﷺ sat facing the Qiblah

while he went to the cemetery. Abu Dawud recorded it on the authority of (Al-Bara Ibn Azib). In that event, the Messenger of Allah ﷺ went out following a funeral.

In the above narration, there is permissibility of sitting for someone who follows a funeral; that he can sit facing the Qiblah until the corpse is buried. So also in the narration there is legitimacy of facing the Qiblah for those who go visiting because the person has gone out to the cemetery as the one who goes out following a funeral has, so also he can sit as the person can.

The Messenger of Allah ﷺ used to say any time he visited the grave:

السَّلامُ عَلَيْكُمْ أَهْلَ دَارَ قَوْمٍ مُؤْمِنِينَ وَإِنَّا إِنْ شَاءَ اللَّهُ بِكُمْ لَاحِقُونَ
نَسْأَلُ اللَّهُ لنَا وَلَكُمُ العَافِيَةَ

Peace unto you O inhabitants of this abode, among the believers; we shall surely by Allah's Leave meet you. We ask Allah for protection for ourselves and you too.

It is proper that the visitor utters the statement above.

As for the prohibition of taking graves as masjids, the Ahadith over that are very many and are well-established in the Sahihayn and some other works. There are several wordings for them and among which is:

لَعَنَ اللَّهُ اليَهُودَ اتَّخَذُوا قُبُورَ أَنْبِيَائِهِم مَسَاجِدَ

May Allah curse the Jews; they took the graves of their Prophets as masjids.

In another version it reads:

قَاتَلَ اللَّهُ اليَهُودَ

May Allah damn the Jews...

Another version reads:

لَا تَتَّخِذُوا قَبْرِي مَسْجِداً

Do not take my grave as a masjid.

In another version:

لَا تَتَّخِذُوا قَبْرِي وَثَناً

Do not take my grave as an idol.

As for the prohibition of beautifying the graves and putting light in them, the proof for that is this hadith:

لَعَنَ اللَّهُ زَائِرَاتِ القُبُور وَالمُتَّخِذِينَ عَلَيهَا المَسَاجِد وَالسُّرُج

May Allah curse women who visit graves, and those who build masjid graves and who put light in them.

Ahmad, Abu Dawud, An-Nasai, and At-Tirmidhi recorded it; the latter held its chain to be hasan. There is Abu Salih Baad him in the chain; there are some ill comments against him.

Ahmad recorded so also Muslim, the Collectors of Sunan [on the authority of Jabir ﷺ who said: The Prophet ﷺ forbade that grave should be concreted and that it should be sat upon or a building erected on it.' At-Tirmidhi added: 'And that something should be written over it or that it should be sat on. At-Tirmidhi held it to be authentic.

An-Nasai ﷺ recorded also the prohibition with regard to writing over the grave.

Al-Hakim ﷺ said: 'The hadith of prohibition of writing over the grave is upon the criteria of Muslim even though he did not record it in his Sahih.

As for the prohibition of sitting on the graves, the proof for that is what

Muslim, Ahmad, and the Collectors of Sunan recorded on the authority of Abu Hurairah ﷺ. He reported that the Messenger of Allah ﷺ said: that any of you sits on an ember that causes his clothes and his skin to burn is better for him than he should sit on the grave.

Ahmad also recorded with a sound chain, on the authority of Amr bin Hazm ﷺ who said: The Messenger of Allah ﷺ saw me reclining over a grave then he ﷺ said:

لَا تُؤْذِ صَاحِبَ هَذَا القَبْرِ

Do not hurt the owner of that grave.

As for the prohibition of abusing the dead, the proof for the prohibition is the statement of the Messenger of Allah ﷺ that goes thus:

لَا تَسُبُّوا الأَمْوَاتَ فَإِنَّهُم قَدْ أَفْضَوا إِلَى مَا قَدَّمُوا

Do not abuse the dead ones for they have gone to meet what they sent forth.

Al-Bukhari and others recorded the hadith on the authority of 'A'ishah ﷺ.

Ahmad and An-Nasai also recorded on the authority of Ibn Abbas ﷺ: Do not abuse our dead lest you hurt the living ones among us. There is Salih bin Nabhaan in the chain; he is a weak narrator. However, a hadith that was recorded on the authority of Sahl bin Sad and Al-Mughirah ﷺ that has a similar meaning gives support to it.

As for the legality of paying condolence (to the bereaved), the proof for that is this hadith:

مَنْ عَزَّى مُصَاباً فَلَهُ مِثْلُ أَجْرِهِ

Whoever pays a condolence to an afflicted person, he will have the like of his rewards.

Ibn Majah, At-Tirmidhi and Al-Hakim recorded the hadith on the authority of Ibn Mas'ud ﷺ. The presence of Ali bin Aasim (in the chain) has made the hadith to be held to be reprehensible.

Ibn Majah recorded a hadith on the authority of Amr bin Hazm ﷺ from the Prophet ﷺ:

مَا مِنْ مُؤمِنٍ يُعَزِّي أَخَاهُ بمُصِيبَتِهِ إلا كَسَاهُ اللَّهُ عزَّ وجلَّ مِن حُلَلِ الكَرَامَةِ يومَ القِيامَةِ

No believer will express condolence to brother except that Allah, the Almighty, will clothe him with honourable garments on the Day of Resurrection.

The men of the chain are trustworthy.

Al-Shafi'i recorded on the authority of Jafar bin Muhammad from his father then his grandfather who said: When the Messenger of Allah ﷺ died and people began to condole his family, someone was heard saying: 'Indeed there is condolence for all afflictions, replacement for all destruction, catching up with what misses one. So be steadfast in Allah and have hope in Him. Indeed the afflicted one is he that is deprived of rewards. There is Al-Qasim bin Abdullah bin Umar; he is abandoned.

Al-Bukhari and Muslim recorded on the authority of Usamah bin Zaid ﷺ who said: We were with the Prophet ﷺ; one of his daughters sent someone for him and to tell him that a boy or son of her was in the pang of death. The Messenger of Allah said to the person she sent: 'Go back to her and tell her that:

إنَّ لِلَّهِ مَا أَخَذَ وَلهُ مَا أَعْطَى وَكُلُّ شَيءٍ عَنْدَهُ بِأَجَلٍ مُسَمًّى فَمُرْهَا فَلْتَصْبِرْ وَلْتَحْتَسِبْ

Allah's is what He takes, His is what He gives. Everything with Him is for an appointed time. Tell her to be patient and hope for reward.

It is therefore essential that the condolence message is passed with this established statement as contained in the Sahih. It should not be left for other than it.

As for the permissibility of providing food for the bereaved, the proof for that is the hadith recorded on the authority of Abdullah bin Jafar ﷺ who said: 'The news of the death of Jafar came when he was killed; the Prophet ﷺ said:

اصْنَعُوا لآلِ جَعْفرٍ طَعَاماً فَقَد أَتَاهُمْ مَا يَشْغَلُهُمْ

Prepare food for the family of Jafar; it has befell them what will preoccupy them.

The hadith was recorded by Ahmad, Abu Dawud, At-Tirmidhi, and Ibn Majah. Ibn As-Sakan held it to be authentic and At-Tirmidhi held it to be hasan.

Ahmad, At-Tabarani and Ibn Majah also recorded the like of the hadith on the authority Asma bint Umays, the mother of Abdullah bin Jafar, ﷺ.

Ahmad and Ibn Majah also recorded another hadith with a sound chain on the authority of Jarir who said: 'We used to consider as wailing the act of gathering in the house of the bereaved and preparation of food (for people by the bereaved) after the dead has been buried.

This does not contradict what has been established from the Prophet ﷺ.

4 كتاب الزَّكاة
Book of Zakat
Compulsory Alms

Zakat is obligatory from the following sources of wealth provided the person that owns the wealth has control and he is religiously responsible.

باب زكاة الحيوان

Chapter 4.1 Zakat of Animals

The Zakat obligation here is due from the livestock such as the camel, cattle and sheep.

Explanation:

I say: Zakat is one of the obligatory institutions in the Deen and one of its pillars. It is also one of the necessities the Deen. Zakat is however not obligatory except from things the Lawgiver has made it obligatory from in terms of wealth, and as explained to the people.

Such explanation is found to Allah's Statement:

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً

Take Sadaqah (alms) from their wealth... [At-Taubah: 103]

And this Statement:

وَءَاتُوا الزَّكَاةَ

And give Zakat. [Al-Baqarah: 83]

As it is the matters of Prayer in the command like:

وَأَقِيمُوا الصَّلَاةَ

And perform As-Salah [Al-Baqarah: 83]

Allah has made that into law by virtue of the five daily prayers and as explained by the Messenger of Allah ﷺ to the people.

Many people of knowledge have gone very wide in obligating Zakat from wealth which Allah has not placed any obligation upon; in fact the Messenger of Allah ﷺ clearly expressed that Zakat is not compulsory from some wealth. An example of that is his statement ﷺ:

لَيْسَ عَلَى المَرْءِ فِي عَبْدِهِ وَلا فَرَسِهِ صَدَقَة.

There are no (obligatory) alms due from a person over his slave and horse.

The Companions indeed had wealth, ornament, trades, and vegetables from which the Messenger of Allah ﷺ did not legislate any Zakat, neither did he ﷺ request payment of Zakat from them. Had any of the categories of the wealth mentioned above has an obligatory Zakat due from them; he ﷺ would have explained it to the people from what was revealed to them.

We have brought in this summary work what is obligatory as Zakat, and we mentioned some other kinds of wealth that are not affected by Zakat which some people of knowledge have placed Zakat on; you will see that later.

As for the assertion that Zakat is not obligatory except on the person who is religiously responsible, know that a statement like this might seem repugnant

to the understanding of whoever might hear it but if the person looks at it critically and stops beside the truth, he will come to realize that that is the truth.

The meaning of that is that Zakat is one of the pillars, supports, and foothold of Islam. And there is no difference of opinion as to the fact that the four pillars of Islam, fifth of which is Zakat, are not obligatory on whoever is not morally (and religiously) responsible. So if Zakat is obligatory upon such, there must be an evidence for it; and where is the evidence?

What has come from the lawgiver in this respect that can stand as proof as was reported from the Messenger of Allah ﷺ that he commanded that there should be trading from the wealth of orphans so that the wealth would not be affected by Zakat; such is not authentic from the Prophet ﷺ. As for what was reported from some of the Companions, there is no proof in that. Like what is recorded by Al-Bayhaqi on the authority of Ibn Mas'ud رضي الله عنه: the report contradicts other narrations reported likewise. Ibn Mas'ud said: 'Whoever is in charge of the wealth of an orphan should protect it for years and when he wants to hand over his wealth to him, let him inform him of what it contains of Zakat, if he (the orphan) wishes he pays the Zakat and if he wishes he does not pay it.' There is a similar report by Ibn Abbas رضي الله عنهما.

Someone might say that the command contained in the Verse:

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً

Take Sadaqah (alms) from their wealth... [At-Tawbah: 103]

That the command is general among other texts, that is not so because the reference is as regard none but those who are religiously responsible. So also are the rest of the pillars of Islam, rather the rest of the Islamic responsibilities. There is agreement over their not being obligatory on those who are not religiously responsible even though the commands regarding the acts have come generally. Therefore if the general statement with regard to the obligation of Zakat affects those who are not religiously responsible then the same will the issue with respect to other pillars – and that is not so according to the consensus. Whatever points to falsehood is itself falsehood.

Moreover, the rest part of the Verse: Take Sadaqah (alms) from their wealth... indicates non-obligation of Zakat on the kids and the insane; that rest part is Allah's Statement:

تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا

...in order to purify them and sanctify them with it... [At-Taubah: 103].

This is because there is no meaning to purification or sanctification of the kids and the insane.

Therefore, wealth of slaves (of Allah) are to be held sacred according to the texts of the Qur'an and Sunnah; nothing can make it lawful (for others) except with the pleasure and pardon (of its owner), or with what has come under the Shari'ah such as payment of Zakat, blood-money, indemnity, prompt assertion of claim and what Is similar. Whoever thus thinks that wealth of a slave is lawful (thereof) especially a person whom the pen writing down acts have been raised from should come up with proofs. What is obligatory is that a just researcher should stay by refusal to utter such a statement until he is forced by a proof to shift his ground.

Allah never made Zakat obligatory on the guardian of a kid or an insane person (from the latter's wealth) and He never commanded the guardian to give Zakat out of the wealth, neither did He permitted him to. Rather there are narrations regarding the wealth of orphans that strike the hearts and can make the souls to tremble (forbidding dealing in the orphan's wealth as one might like.)

As for the assertion that Zakat is not payable from other types of animals except three (camel, cattle and sheep), this is because he ﷺ that was sent to explain to the people what was revealed to them never made other than those three obligatory upon them. As for a mention of Allah's right in horses, what is intended by that is Jihad.

باب نِصَاب الإِبِل

Chapter 4.2 Zakat of Camel



When the number of camels reaches five then a female sheep will be given as their Zakat then from every other five camel a female sheep, but when the number of camels reaches twenty-five, a one-year old female camel, or a two-year old male camel will be given as their Zakat. When the number of camels reaches thirty-six, a two-year old female camel will be given as their Zakat. When the number of camels reaches forty, a three-year old female camel will be given as their Zakat, and when the number reaches sixty-one, a four-year old female camel will be given as their Zakat. However, when the number of camels reaches seventy-six, two two-year old female camels will be given as their Zakat. When the number reaches ninety-one up to one hundred and twenty, two three-year old female camels will be given as their Zakat. At every addition of forty camels (to one hundred and twenty), a two-year old female camel will be given as their Zakat. And at every addition of fifty camels, a three-year old female camel will be given as their Zakat.

Explanation:

I say: The explication above as regard what is obligatory in the Zakat of camels is based on what has come authentically in the hadith recorded on the authority of Anas [bin Malik ﷺ] that Abu Bakr (As-Sidiq ﷺ) wrote it for them (the Companions) that those were what the Messenger of Allah ﷺ made obligatory (in terms of Zakat) upon the Muslims. Then he mentioned what must be given as Zakat in each of the number mentioned in the summary above. After that he said: 'When the ages of the camels are apparent with respect to the obligation of Zakat; whoever has a number of camel from which he will give a four year old female camel as their Zakat but does not have such a camel but has a three year old female camel, that can be accepted from him but with the addition of two female sheep (or two she-goats) provided he has the capacity; or that he should pay twenty dirham (alongside the three year old female camel that he has). And that whoever's number of camels reaches the level wherein he is supposed to give a three year old female camel but does not have it except a four year old female camel, the four year old camel will be taken from him but the Zakat-collector will give him twenty dirham or two female sheep (or two she-goats) back. And whoever's number of camels reaches the level whereby he is supposed to give a three year old female camel and does not have it but a two year old female camel, the two old year camel will be taken from him and he will give two female sheep (or two she-goats) with it if he has the ability otherwise

he should pay twenty dirham alongside. Whoever's number of Camel reaches the level where he is supposed to give a two year old female camel but does not have it except a three year old female camel, the three year old camel will be accepted from him and the Zakat-collector will give him twenty dirham or two female sheep (or two she-goats) back. Whoever's number of camels reaches the level whereby he is supposed to give a two year old camel but does not have it but a year old female camel, it will be taken from him and will give two female sheep (or two she-goats) alongside, if he has the ability otherwise he should pay twenty dirham alongside. And when the number reaches where he is supposed to give a year old female camel but does not have it except a two year old male camel, it will be taken from him, and there is nothing else on him. Whoever has only four camels gives nothing as Zakat thereof except if he so wills.

Ahmad, An-Nasai and Abu Dawud recoded the hadith above. Al-Bukhari too recorded it variously in his Sahih.

Ibn Hazm ﴿رحمه الله﴾ said: This book (of Abu Bakr) is stupendously authentic; As-Sidiq – ﴿رضي الله عنه﴾ worked with it in the presence of the scholars (among the Companions) and none opposed him.

Ibn Hibban other hadith collectors held the report to be authentic.

Ahmad, Abu Dawud, At-Tirmidhi, who held it to be hasan, Al-Daraqutni, Al-Hakim, and Al-Bayhaqi recorded the like of what is contained in the summary of this work (above) on the authority of Az-Zuhri ﴿رحمه الله﴾ from Salim, who reported from his father Ibn Umar ﴿رضي الله عنه﴾ that he said: The Messenger of Allah ﴿ﷺ﴾ wrote the details of Zakat for his workers (in charge of collecting Zakat) but was unable to make it known until he died, thus Abu Bakr ﴿رضي الله عنه﴾ brought it out and worked with it until he died, then Umar ﴿رضي الله عنه﴾ as well worked with it after Abu Bakr.

Ibn Umar ﴿رضي الله عنه﴾ said: The day Umar ﴿رضي الله عنه﴾ died, the book was contained in his testament... then Ibn Umar ﴿رضي الله عنه﴾ narrated the report

بَاب نِصَاب البَقَر

Chapter 4.3 Zakat of Cattle



A year old male cow or a year old female cow is Zakat of cattle of which the number reaches thirty. In each collection of forty cattle, a two year old cow is their Zakat, and it continues in that way.

Explanation:

I say: This is implied by what Ahmad, the Collectors of Sunan, Ibn Hibban, and Al-Hakim, – held authentic by the last two –, recorded on the authority of Muadh bin Jabal ﷺ. He said: The Messenger of Allah ﷺ sent me to Yemen and he commanded me to take a year old male or female cow for every thirty cattle, and a two year old cow for every forty cattle.

If the cattle are more than forty, nothing will be given as Zakat from the addition until their number reaches between seventy, from which a year and two year old cows will be taken. At eighty, two two-year old cows will be taken.

Ibn Abdil-Barr said in Al-Istidhkaar: 'There is no controversy among the people of knowledge that the Zakat of cattle is as contained in the hadith recorded on the authority of Muadh ﷺ; that is the unit of Zakat agreed on.

بَاب نِصَاب الغَنَم

Chapter 4.4 Zakat of Sheep



From forty to one hundred and twenty-one sheep a sheep (or a she-goat) will be given as their Zakat. Then from one hundred and twenty-one up to two hundred, two sheep (or two she goats) will be given as their Zakat. Then from two hundred and one up to three hundred sheep, three sheep (or she-goats) will be given as their Zakat. Then at addition of every hundred (to three hundred), a sheep, or goat will be given as the Zakat of the addition.

Explanation:

I say: This outline is as established in the hadith recorded on the authority of Anas [bin Malik ﷺ so also the hadith recorded on the authority of Ibn Umar ﷺ; both hadith have been mentioned under the section of Zakat of camel above. There is a consensus over it.

باب في الجَمع والتفَرِيق والأوقَاص

Chapter 4.5 Evading Zakat Payment



The separated livestock should not be combined nor the combined ones be separated in order to escape the (required proportion for) Zakat. There is no Zakat in anything less than what is obligatory that Zakat is taken from it nor there is Zakat payable on the additions in between the two Zakat due levels. When the livestock are combined then their Zakat will be paid according to what each is worth. Old animal is not to be taken as Zakat or one-eyed animal or a defective animal or an animal that is very young or a gluttonous (fat) animal or an animal that is being kept at home because of its milk or a pregnant animal or a male sheep.

Explanation:

I say: As for the impropriety of merging between collections of separated livestock and separating the combined in order to evade payment of Zakat, this is because the Messenger of Allah ﷺ prohibited them as it has come in the book of Abu Bakr رضي الله عنه which he reported from the Messenger of Allah ﷺ as earlier mentioned. So also is what has come in the hadith recorded on the authority of Ibn Umar رضي الله عنه who was also making a reference to the book of the Messenger of Allah ﷺ also in that regard as was earlier mentioned as well. The prohibition of that has also come in other than the two mentioned. Another hadith contains the prohibition of that.

The meaning of combining different collections of livestock is like when there are three groups (of livestock owners) where each of them is supposed to give a female sheep as the Zakat of his livestock because each of them has forty sheep, but if all the three owners combine their livestock, they will only have to give a female sheep instead. The picture of separating between collections of livestock is when two men have two hundred and one sheep (in a combined business) whereby they are expected to give three sheep but if they divide their livestock each of them will just have to give one sheep each eventually, or any other similar picture. This is upon the consideration of grazing land, rest places, and place of mixing even if the owners are different as the proof indicates.

As for the assertion that no Zakat payable from what is less than the Zakat obligation level, there is no controversy over that. As for the assertion that there is no Zakat payable from an additional number (of livestock) in between two Zakat due levels (the addition that has not reached a level where there must be another Zakat), there is no controversy over that too except what is reported

from one of the opinions of Abu Hanifah. There is a hadith recorded on the authority of Muadh ﷺ as found with Ahmad and some other collectors of hadith that no Zakat is payable from additional number that has not reached Zakat payable level.

As for dealing with the combined livestock in the proportion belonging to each group, the proof for that is what has occurred in the two books that were mentioned. That is a reference to the statement of the Messenger of Allah ﷺ that goes thus: 'Whatever is given from the combinations of two owners will be divided equally between the partners'. What is intended by the statement is that when animals owned by two owners combined such that they reach the level whereby Zakat is mandatory, they will both give the Zakat of the livestock that are combined together according to what has come from each group.

The picture of the above is as follow: If each of the owners should have twenty sheep, the Zakat collector will take a sheep for forty sheep. If he took from those belonging to one of them, the other person will return the worth of the half of it to his partner. What this implies is that a mere combination of livestock of two owners will make both collections of livestock become like the property of a person; that is the truth as indicated by the proofs (of the Shari'ah).

As for the assertion that a very old animal is not going to be accepted as Zakat among other types of animals mentioned, the proof for that is what is contained in the book of Abu Bakr ﷺ. It reads: A very old animal will not be taken as Zakat nor one-eyed animal nor a male sheep (or he-goat).

In the book of Umar ﷺ reported from the Prophet ﷺ, which goes thus: A very old animal will not be accepted as Zakat nor an animal with (any physical) defect.

In the hadith recorded on the authority of Abdullah bin Muawiyah Al-Ghaadiri linked the Messenger of Allah ﷺ: A very old animal should not be given as Zakat nor a scabrous animal or a sickly or animal nor a low-price animal but let what you will give be from the best of your wealth. Abu Dawud and At-Tabarani recorded the report with a sound chain.

Malik also recorded in Al-Muwata, and Ash-Shafi'i, on the authority of Sufyan bin Abdillah Ath-Thaqafi that Umar bin Al-Khattab ﷺ forbade the Zakat collector from accepting old animals, animals kept for their milk, animals in gestation period and a male sheep. That is what Ibn Abi Shaybah too recorded from the Prophet ﷺ as he has it in his Musnad.

The old animal is the type whose teeth have fallen. The defect referred to is the one in the eye; it is said general type of defects. In fact the statement: 'nor a defective animal' includes all animals that have defects which those who have the knowledge of animal husbandry consider as defects. The Zakat collector

will not accept such as Zakat. A scabrous animal too will not be accepted, so also is the animal whose price is very low due to its non-production of milk, and a gluttonous (fat) animal; that is a barren animal. So also an animal that is kept at home for milk production, so also is the one in a gestation period, and a male sheep (or he-goat) that mates with the she-goats – because the owner of the livestock will be in need of it even if it is not among the best of his livestock.

باب زكاة الذَّهَب والفِضَّة

Chapter 4.6 Zakat on Gold and Silver

This is applicable when a year passes over any of them, and it is quarter of ten. The minimum level of gold is 20 dinar and silver, 200 dirham; there is no Zakat payable from whatever is less than that. There is also no Zakat payable from other jewellery, business wealth, and investments.

Explanation:

I say: There is no controversy as to the obligation of Zakat from gold and silver when they reach the Nisab (minimum level from which Zakat is payable) and when a year passes over them. The proof for that is the hadith recorded on the authority of Ali bin Abi Talib ﷺ that the Messenger of Allah ﷺ said:

قَدْ عَفَوتُ لَكُمْ عَن صَدَقَةِ الخَيْلِ والرَّقيقِ فَهَاتُوا صَدَقَةَ الرِّقَةِ مِنْ كُلِّ أَرْبَعِينَ دِرْهَماً دِرْهَماً وَلَيْسَ في تِسْعِينَ وَمِائَةٍ شَيءٌ فإِذَا بَلَغَتْ مِائَتَيْنِ فَفِيهَا خَمْسَةُ دَرَاهِمَ

I have overlooked Zakat of horses and slaves for you but you must pay the Zakat of silver; in every forty dirham, you will pay a dirham. There is no payment due from one hundred and ninety dirham but if the amount reaches two hundred dirham then pay five dirhams as its Zakat.

It is recorded by Ahmad, Abu Dawud, At-Tirmidhi, and An-Nasai.

In another version, it reads:

وَلَيْسَ فِيمَا دُونَ المِائَتَينِ زَكَاةٌ.

There is no Zakat payable from whatever is less than two hundred (dirham).

There is a problem with the chain of narration of the above hadith. Ibn Hajar ﴿رحمه الله﴾ held it to be hasan and At-Trimidhi reported that Al-Bukhari held it to be authentic. Ahmad and Muslim recorded a hadith on the authority of Jabir ﴿رضي الله عنه﴾ who said the Messenger of Allah ﴿ﷺ﴾ said:

لَيْسَ فِيمَا دُونَ خَمْسِ أَوَاقٍ مِنَ الوَرِقِ صَدَقَةٌ وَلَيْسَ فِيمَا دُونَ خَمْسِ ذَوْدٍ مِنَ الإِبِلِ صَدَقَةٌ وَلَيْسَ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ مِنَ التَّمْرِ صَدَقَةٌ.

Ahmad and Al-Bukhari also recorded the above hadith on the authority of Abu Sa'id ﴿رضي الله عنه﴾.

Abu Dawud recorded another narration the authority of Ali bin Abi Talib ﴿رضي الله عنه﴾ who said: When you have two hundred dirhams and a year passes over it, then you will pay five dirham, and you will not pay anything from your gold until it becomes twenty dinar. When you have twenty dinar of gold and a year passes over it, then you will pay half a dinar as its Zakat.

There is a problem with the chain of the above report but Ibn Hajar ﴿رحمه الله﴾ held it to be hasan, and At-Tirmidhi reported that Al-Bukhari held it to be authentic as it occurred in the first narration.

There has been a consensus that the Nisab (Zakat due amount) of silver is two hundred dirham; none has disputed that except Ibn Habib Al-Andalusi.

The five ounces mentioned in the hadith is equal to two hundred dirham because the weight of each ounce is forty dirham. The scholars also agree that the Nisab of gold is twenty dinar; this is the majority view. There is a report contradicting that from Al-Hasan and Taawus; the report stands rejected.

Passage of a year is considered in the payment of Zakat. However, Ibn Abbas, Ibn Mas'ud, Dawud, As-Shadiq, Al-Baqir, and An-Nasir were of the view that Zakat will be obligatory on the owner of gold or silver the moment his gold or silver reaches the Nisab. They hold to that view according to what is indicated in the obligation of its payment from the statement (of the Messenger of Allah ﴿ﷺ﴾. But holding to such opinion is tantamount to ignoring the established condition in payment.

As for the assertion that Zakat is not obligatory on other jewellery such as pearls, Corundum, emerald, diamond, corals, and similar ornaments, that is due to absence of proof obligating payment of Zakat from such; freedom from

liability is a determining factor. There is what buttresses this assertion is in the first part of the discussion about Zakat.

As for the assertion that Zakat is not obligatory from business wealth, that is due to what we have earlier mentioned as absence of proof indicating that. There used to be various forms of business in the time of the Messenger of Allah ﷺ it was however not reported from him what indicates that Zakat was paid from business wealth.

As for what is recorded by Abu Dawud, Al-Daraqutni and Al-Bazzar on the authority of Samurah ﷺ that the Messenger of Allah ﷺ 'Used to command us to take Zakat out of what is prepared for trade.' Ibn Hajar ﷺ said in At-Talkhis that there is a problem of anonymity of a reporter in the chain of the hadith.

As for what Al-Hakim recorded and Al-Daraqutni on the authority of Imran ﷺ from the Messenger of Allah ﷺ in this version:

فِي الإِبِلِ صَدَقَتُهَا وَفِي الغَنَمِ صَدَقَتُهَا وَفِي البَزِّ صَدَقَتُهُ.

There is Zakat payable from camels, so also from sheep and from (Al-Bazz) dry goods.

Al-Haafidh Ibn Hajr ﷺ held the hadith to be weak in Fathul-Bari; all its routes, except of one which he said about: This chain is fair.

But, it will not be hidden from you that such a statement stands as nothing especially on issues of general concern (like this); it is so because Ibn Daqiq Al-Eid ﷺ said he saw in Al-Mustadrak about the hadith is Al-Burr (not Al-Bazz).' He also said that Al-Daraqutni recorded it as 'Al-Bazz' but with very weak chains which can have other probability, and therefore makes it stands as no proof.

If we were to say that Al-Hakim held the chain of the hadith to be authentic as the author of Al-Muhallaa said in Shar'h Minhaj, the mere factor of another probability to the hadith will remove its being suitable as a proof. This is coupled with the fact that the said authentication by Al-Haakim has been confronted with declaration of weakness from several experts of hadith who came after the era of Al-Haakim and they have criticized that adding to non-obligation of Zakat of business wealth is what has come authentically from the Messenger of Allah ﷺ in the Sahih on the authority of Abu Hurairah ﷺ as follow:

لَيْسَ عَلَى المُسْلِمِ صَدَقَةٌ فِي عَبدِهِ ولا فَرَسِهِ.

There is no Zakat payment upon a Muslim as regard his slave and horse.

What is apparent in the report is non-applicability of Zakat in all circumstances.

Ibn Al-Mundhir reported a consensus on Zakat of trade, this report is not authentic. The first people to oppose that are the literalists; and they remain one of sects of Islam.

As for the assertion that Zakat is not payable from investments like buildings built for rent, so also animals for ride and what is similar. Non-applicability of Zakat to them is due to non-availability of proof as we have earlier mentioned in the hadith: No Zakat payment upon a Muslim as regard his slave and horse' which includes this circumstance – of investment in rent, even though there is no need for proof for that rather mere prevention of it suffices.

باب زكاة النَّبات

Chapter 4.7 Zakat on Crops



It is obligatory to give one-tenth (as Zakat) in case of wheat, barley, corn, dates and raisin. But whatever is artificially irrigated thereof, its Zakat is half of one-tenth of the crop. The Nisab of such produce is five loads. There is no Zakat from whatever is other than those such as vegetables and other crops. It is also obligatory to give one-tenth of honey as Zakat. It is proper to hasten the Zakat. It is upon the ruler to distribute the Zakat coming from the rich upon the poor. The owner of the wealth will be free from liability when he gives his wealth to the Sultan (as Zakat) even if the latter is an oppressor.

Explanation:

I say: As for the obligation of Zakat from these types of crops, that is based on the general authentic proofs on it, so also the specific ones that have mentioned them. Such as the hadith recorded on the authority of Abu Musa and Muadh ﷺ, when the Messenger of Allah ﷺ sent both of them to Yemen to teach the people there their religion; the Messenger of Allah ﷺ told them:

لَا تَأْخُذ الصَّدَقَة إِلَّا مِنْ هَذِهِ الأَرْبَعَة الشَّعِير وَالحِنْطَة والزَّبِيب والتَّمْر

Do not take Zakat except from these four: Barley, wheat, raisin and dates.

Al-Hakim, Al-Bayhaqi and At-Tabarani recorded the hadith. Al-Bayhaqi said: The narrators of the hadith are trustworthy and the chain is connected.

At-Tabarani also recorded on the authority of Umar ﷺ who said: 'Indeed the Messenger of Allah ﷺ lay down as a practice, Zakat in four things... then he ﷺ mentioned the four crops.

Ibn Majah and Al-Daraqutni also recorded on the authority of Amr bin Shuayb from his father, who reported from his father as well ﷺ in this wording: 'Indeed the Messenger of Allah ﷺ laid it as a practice, payment of Zakat from wheat, Barley, dates and raisin.

Ibn Majah ﴿رحمه الله﴾ has an addition: and corn. There is however Muhammad bin Ubaydullah Al-Arzami in the chain; he is an abandoned narrator.

So also is what Al-Bayhaqi recorded via Mujahid ﴿رحمه الله﴾ who said: Zakat was not given in the era of the Prophet ﴿ﷺ﴾ except from five things... then he mentioned the five crops.

Al-Bayhaqi also recorded via the route of Al-Hasan ﴿رحمه الله﴾ who said: Zakat was not obligated except in ten things... then he mentioned the five crops mentioned then the following: Camels, cattle, sheep, gold and silver.

He (Al-Bayhaqi) also recorded back to Ash-Shabi ﴿رحمه الله﴾ that he said: The Messenger of Allah ﴿ﷺ﴾ wrote to the people of Yemen that Zakat is to be collected from wheat, barley, dates and raisin. Al-Bayhaqi ﴿رحمه الله﴾ said: These Mursal narrations are of different routes such that they give weight to one another; and there is hadith recorded on the authority of Abu Musa ﴿رضي الله عنه﴾ alongside. So also the statement of Umar, Ali, and 'A'ishah ﴿رضي الله عنهم﴾ that goes thus: There is no Zakat due from vegetables. End of quote.

The hadith talking about vegetables is recorded by Al-Daraqutni, Al-Hakim, and Al-Athram in his Sunan that Attaa bin as-Saib ﴿رحمه الله﴾ said: Abdullah bin Al-Mughirah ﴿رضي الله عنه﴾ wanted to take Zakat of vegetables from the land owned by Musa bin Talhah ﴿رضي الله عنه﴾ the latter then said to the former: You cannot do that; indeed the Messenger of Allah ﴿ﷺ﴾ used to say there is no Zakat due from that. The report is a very strong Mursal; Al-Daraqutni and Al-Hakim recorded it on the authority of Ishaq bin Yahya bin Talhah from his uncle, Musa bin Talhah back to Muadh ﴿رضي الله عنه﴾ in this wording: As for cucumber, watermelon, pomegranate and sugar cane, the Messenger of Allah ﴿ﷺ﴾ overlooked their Zakat payment.

Al-Haafidh Ibn Hajr (Ibn Hajar) ﴿رحمه الله﴾ said: 'There is weakness and breakage in the chain of the (above) report.

At-Tirmidhi reported a hadith whose part was on authority of Musa bin Talhah back to Muadh ﴿رضي الله عنه﴾. Ibn Adiyy also recorded it from another face back to Anas bin Malik ﴿رضي الله عنه﴾, and Al-Daraqutni on the authority of Ali bin Abi Talib ﴿رضي الله عنه﴾, then another hadith on the authority of Muhammad bin Jahsh ﴿رضي الله عنه﴾ and other on the authority of 'A'ishah ﴿رضي الله عنها﴾. Al-Bayhaqi also recorded it on the authority of Ali and Umar ﴿رضي الله عنهما﴾ but as their own statement. There is a problem with the route of the hadith talking about vegetables but the hadith is reported via many routes that give weight to one another such that it is sufficient as a proof. And when that thought is added to what was earlier mentioned as regard the obligation of Zakat in four crops and five others, all the reports become sufficient for proof without any doubt or confusion. I have recorded all those reports in way that expressed that obligation of Zakat is restricted to those

items. Therefore, that is the explanation from the Messenger of Allah ﷺ as regards what Allah the Almighty revealed; Zakat is not obligatory in other crops apart from the ones mentioned. That is the view of Al-Hasan Al-Basri, Al-Hasan bin Salih, Ath-Thawri and Ash-Shabi ﷺ.

Also, there can be a merger of views, in another perspective, that these proofs mentioned above restrict the general declarations in the Qur'an and Sunnah; this is very clear. It is not proper to say that the proofs are just mentioning some examples of a wide scope of things (payment of Zakat is obligatory from) because of what the proofs contain of restriction, at a time, and negation, at another time.

As for the obligation of paying one-tenth of the crop as Zakat except crops that are artificially irrigated where half of one-tenth of the crop will be given as Zakat; that is from the perspective of the hadith recorded on the authority of Jabir ﷺ from the Prophet ﷺ who said:

فِيمَا سَقَتْ الأَنْهَارُ وَالغَيْمُ العُشْرُ وَفِيمَا سُقِيَ بِالسَّانِيَةِ نِصْفُ العُشْرِ

Regarding whatever (crop) irrigated with rivers and the rain, the Zakat thereof is one-tenth of the crop, while the one that is irrigated by animal is half of one-tenth.

The hadith is recorded by Ahmad, Muslim, An-Nasai and Abu Dawud who said: (The natural irrigation) includes the rivers and springs.

Ahmad, Al-Bukhari and the Collectors of Sunan also recorded another hadith on the authority of Ibn Umar ﷺ that the Prophet ﷺ said:

فِيمَا سَقَتْ السَّمَاءُ وَالعُيُونُ أَوْ كَانَ عَثَرِيًّا العُشْرُ وَفِيمَا سُقِيَ بِالنَّضْحِ نِصْفُ العُشْرِ

Whatever is irrigated by the sky and springs (of crops), or the (palm tree) that searches for water by itself through its roots; the Zakat due from all those is one-tenth. As for whatever is irrigated by wetting, the Zakat thereof is half of one-tenth.

As for the assertion that the Nisab (of crops) is from five loads, the proof for

that is the hadith recorded on the authority of Abu Sa'id ﷺ as contained in the Sahihayn and some other works, from the Prophet ﷺ that he ﷺ said:

لَيْسَ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ صَدَقَةٌ

There is no Zakat from whatever is less than five loads (of harvested crops).

In the version of Ahmad and Ibn Majah that the Prophet ﷺ said:

الوَسْقُ سِتُّونَ صَاعاً

A load is sixty measures of Sa.

In another version from Ahmad and Abu Dawud, the Messenger of Allah ﷺ said:

وَالوَسْقُ سِتُّونَ مَخْتُوماً

A load is sixty seals.

As for the assertion that there is no Zakat due from whatever crops that are other than what were mentioned, the explanation of that has preceded.

As for the assertion that it is obligatory to give one-tenth of (loads of) honey as its Zakat, the proof for that is the hadith recorded on the authority of Amr bin Shuayb from his father, who also reported from his father ﷺ and from the Prophet ﷺ that he took one-tenth of honey (as its Zakat). Ibn Majah recorded the hadith; Al-Daraqutni said: It was reported from AbdurRahman bin Al-Harith and Ibn Laiah from Amr bin Shuayb. Yahya bin Said Al-Ansari ﷺ also reported it from Amr bin Shuayb.

A similar hadith was recorded on the authority of Abu Sayyarah ﷺ as found with Ahmad, Ibn Majah, Abu Dawud and Al-Bayhaqi who said: **I say:** (that is, Ibn Sayyarah ﷺ) O Messenger of Allah, I have a date palm. The Messenger

of Allah ﷺ replied: Pay its one-tenth. There is a breakage in the chain. At-Trimidhi also recorded on the authority of Ibn Umar رضي الله عنهما that the Messenger of Allah ﷺ said:

في العَسَلِ في كلِّ عَشْرَةِ أَزْقَاقٍ زِقٌّ

Zakat of honey that is up to ten water-skins is one water-skin.

There is a fellow called Sadaqatus-Sameen in its chain; he has a very weak memory.

Abdul Razzaq and Al-Bayhaqi recorded on the authority of Abu Hurairah رضي الله عنه reported from the Messenger of Allah ﷺ that he said:

أَدُّوا العُشْرَ فِي العَسَلِ

Pay one-tenth as the Zakat of honey.

There is a fellow called Muneerr bin Abdillah in the chain of the hadith; he is weak. Nevertheless, all the Ahadith do not fall short of the appropriateness of citing them as proofs.

As for the assertion that it is permissible to pay Zakat before a year circle, the proof for that is the hadith recorded on the authority of Ali رضي الله عنه that Al-Abbas ibn Abd Al-Muttalib رضي الله عنه asked the Prophet ﷺ regarding hastening the payment of his Zakat before its time arrived, the Messenger of Allah ﷺ gave him the respite regarding that. Ahmad, Abu Dawud, At-Tirmidhi, Ibn Majah, Al-Hakim, Al-Daraqutni and Al-Bayhaqi recorded the hadith. There is an opinion that the report is a Mursal. It was also reported from Ali رضي الله عنه in another wording which was recorded by Al-Bayhaqi that the Prophet ﷺ said:

إِنَّا كُنَّا احْتَجنَا فَأَسْلَفَنَا العَبَّاس صَدَقَة عَامَيْنِ

We became in need, and then Al-Abbas preceded us with Zakat of two years.

The men of the hadith are trustworthy except that there is a breakage in its chain. A hadith is found in the Sahihayn on the authority of Abu Hurairah ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ said regarding the Zakat of Al-Abbas ﴿ﷺ﴾:

هِيَ عَلَيَّ ومِثْلُهَا مَعَهَا

It has been given to me and a lke of it (the year before).

The Messenger of Allah ﴿ﷺ﴾ made the above statement when it was said to him that he (Al-Abbas ﴿ﷺ﴾) did not want to pay his Zakat. It was said that he requested a Zakat of two years from him (like a loan for the Muslim Community).

As for the assertion that it is upon the leader to take Zakat from the wealthy ones and distribute it among the poor ones, the proof for that is the hadith of Abu Juhayfah ﴿ﷺ﴾ who said: A Zakat collector came to us from the Messenger of Allah ﴿ﷺ﴾ and took Zakat from the wealthy ones among us and distributed it among the poor among us. I was a young orphan thus he (the Zakat collector) gave me a young female camel.' The report is recorded by At-Tirmidhi and was held hasan by him.

So also is the hadith recorded on the authority of Imran bin Husayn ﴿ﷺ﴾ who said he was appointed as a Zakat collector. When he came back from where he was sent, he was asked: Where is the wealth? He replied: Did you send me to collect wealth; we took it from whom we used to take it from in the time of the Messenger of Allah ﴿ﷺ﴾ and we distributed it to the people whom we used to distribute it to.' The narration is recorded by Abu Dawud and Ibn Majah. And on the authority of Taawus ﴿ﷺ﴾ who said: It is written in the book of Muadh ﴿ﷺ﴾: Whoever moves from one district to another, his Zakat or one-tenth (of crops) will be paid where his kith-and-kin are. The statement is recorded by Al-Athram and Saidr bin Mansuur with a sound chain.

There is another hadith recorded in the Sahihayn on the authority of Muadh ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ told him when he was sent to Yemen that:

خُذْهَا مِنْ أَغْنِيَائِهِمْ وَضَعْهَا فِي فُقَرَائِهِم

Take it (i.e. Zakat) from the wealthy ones among them and give it to the poor ones.

As for the assertion that a owner of wealth will be free from liability when he gives his Zakat to the ruler (to administer its distribution) even if the ruler is an oppressor, The proof for that is the hadith recorded on the authority of Ibn Mas'ud ﷺ in the Sahihayn and some other works that the Messenger of Allah ﷺ said:

إِنَّها سَتَكُونُ بَعْدِي أَثَرَةٌ وأُمُورٌ تُنكِرُونَها

There shall occur after me selfishness (of the rulers) and other matters you will dislike.

The Companions said: What do you command us of, O Messenger of Allah?

He ﷺ replied:

تُؤَدُّونَ الحقَّ الذِّي عَلَيكُمْ وتَسْأَلُونَ اللَّهَ الذِّي لَكُمْ

You will render your duties (to listen and to obey) that are upon you and ask Allah for your rights.

Muslim and At-Tirmidhi recorded another hadith; the latter held it to be authentic, on the authority of Wailr bin Hujr ﷺ who said: I heard the Messenger of Allah ﷺ while a man was asking that: What do you see to if there are rulers who deny us our right but demand their rights from us? The Messenger of Allah ﷺ then said:

اسْمَعُوا وَأَطِيعُوا فإِنَّمَا عَلَيْهِم مَا حُمِّلُوا وَعَلَيكُمْ مَا حُمِّلْتُم

Hear and obey; they will be responsible for that which is placed on them and you will be responsible for that which is placed on you.

Abu Dawud recorded another hadith on the authority of Jabirr bin Atik from the Messenger of Allah ﷺ that he said:

سَيَأْتِيكُمْ رَكْبٌ مَبْغُوضُونَ فَإِذَا أَتَوكُمْ فَرَحِّبُوا بِهِمْ وَخَلُّوا بَيْنَهُم وَبَيْنَ مَا يَبْتَغُونَ فَإِنْ عَدَلُوا فَلِأَنْفُسِهِم وإِنْ ظَلَمُوا فَعَلَيْهَا وأَرْضُوهُم فَإِنَّ تَمَامَ زَكَاتِكُمْ رِضَاهُم

Some odious riders (Zakat collectors) would come to you. When they come to you bid them a welcome and leave them with what they desire. If they are just in their dealings, that good for them, but if they are not, they will be responsible for their oppression. Try to please them; pleasing them makes the complete payment of your Zakat.

At-Tabarani recorded on the authority of Sa'd ibn Abi Waqqas ﷺ who reported from the Messenger of Allah ﷺ that he ﷺ said:

ادْفَعُوا إِلَيْهِم مَا صَلُّوا الخَمْسَ

Pay it (Zakat) to them (the rulers) so far they observe the five daily prayers.

There are several other reports from the Companions ﷺ over the issue such that Al-Bayhaqi recorded on the authority of Umar ﷺ that he said: Give it to them even if they drink liquor. The chain of the report is sound.

Ahmad also recorded on the authority of Anas ﷺ that a man said to the Messenger of Allah ﷺ: When I give Zakat to your messenger then will I become free of liability with Allah and His Messenger? the Messenger of Allah replied in the affirmative and said:

نَعَمْ إِذَا أَدَّيْتَهَا إِلَى رَسُولِي فَقَدْ بَرِئْتَ مِنْهَا إِلَى اللَّهِ وَرَسُولِهِ فَلَكَ أَجْرُهَا وَإِثْمُهَا عَلَى مَنْ بَدَّلَهَا

When you give it to my messenger, you have become free from liability thereof in the Sight of Allah and His Messenger. You will have the reward for it and the sin (thereof) will be upon the one that changes its course.

Al-Bayhaqi also recorded on the authority of Abu Hurairah ﷺ: When the Zakat collector comes to you, give him your Zakat. If he treats you harshly, turn your back to him and do not revile him; say: O Allah I hope for the reward of what he took from me.

The majority of the scholars are of the view of what these proofs indicate – that paying the Zakat to the ruler or to whom he has sent does not waste the Zakat of the Zakat-payer even if the ruler were to distribute the Zakat where he is not supposed to, and whether he is just or oppressive.

باب مَصَارِف الزَّكاة

Chapter 4.8 Recipients of Zakat



They are eight. It is forbidden for Banu Hashim and their allies to take from Zakat. So also it is forbidden upon the rich, strong people who can strive for living (to accept Zakat).

Explanation:

I say: A Noble Verse has enumerated the eight categories of people whom Zakat are to be given. Abu Dawud recorded on the authority of Ziyad bin Al-Harith As-Sudaa'iyy who said: 'I came to the Messenger of Allah ﷺ and made allegiance to him, then a man came and said: 'Give me some Zakat. Then the Messenger of Allah ﷺ said to him: 'Indeed Allah will not be pleased with the ruling of any Prophet nor any other person as regards the obligatory alms except that He Himself rules thereof. He has made the recipients of Zakat to be eight, if you fall within one of those categories, I shall give you of it. There is AbdurRahman bin Ziyad bin Anum Al-Ifriqiyy in the chain; there is a problem with him.

Scholars of exegesis, hadith and jurisprudence have said much about the eight categories of people entitled to Zakat and what should be understood with regards to each category. The truth is that what will be considered is a true description recognized under the Shari'ah or under the language usage. Whoever can be called a poor person then such will be entitled to Zakat, so also with regard to the rest of the descriptions (of receivers of Zakat). If there is no Shari'ah and real meaning to the description (in a person who wants to make a claim to Zakat), it becomes obligatory to refer the matter to the language indicator and explanation. Therefore whatever occurs, to the people of knowledge, of the conditions and considerations that are mentioned as Shari'ah and linguistic indicators; or any proof indicating that, such will be considered, otherwise there will be no consideration for such.

As for the assertion that Zakat is forbidden upon Banu Hashim and their allies, the proof for that is the hadith recorded on the authority of Abu Hurairah from the Messenger of Allah ﷺ that he ﷺ said:

إِنَّا لَا نَأْكُلُ الصَدَقَة

Indeed we (Banu Hashim) do not eat from Zakat.

In another version, it reads:

إِنَّا لَا تَحِلُّ لَنَا الصَّدَقَة

Indeed Zakat is not made lawful for us.

The above hadith can be found in the Sahihayn and some other works. It has also come in the hadith of Abu Rafi ﷺ as follows:

إِنَّ الصَّدَقَةَ لَا تَحِلُّ لَنَا وأَنَّ مَوَالِيَ القَوْمِ مِنْ أَنْفُسِهِم

Indeed Zakat is not lawful for us; and allies of a people are from them.

Ahmad, Abu Dawud, An-Nasai and At-Tirmidhi recorded it, who authenticated it , so also Ibn Hibban and Ibn Khuzaymah. They both also authenticated it. Also in another report of Ahmad and At-Tahawi ﷺ from the authority of Al-Hasan bin Ali (that he ﷺ said): Zakat is not lawful for the family of Muhammad. While in the hadith recorded on the authority of Al-Muttalib bin Rabiah ﷺ he ﷺ said:

إِنَّ الصَّدَقَةَ لَا تَنْبَغِي لِمُحَمَّدٍ وَلَا لِآلِ مُحَمَّدٍ إِنَّمَا هِيَ أَوْسَاخُ النَّاسِ

Indeed Zakat is not proper for Muhammad and the family of Muhammad; it is indeed dirts of the people (taken away from their wealth).

The hadith above can be found in Sahih Muslim. There are other Ahadith under the section.

Ibn Qudamah ﴿رحمه الله﴾ said: 'We are not aware of any difference of opinions regarding the fact that the obligatory alms is not lawful for Banu Hashim. So also said Abu Talib, for the (offspring of the) household of the Prophet ﴿ﷺ﴾, that there is a consensus over that, as that was said in Al-Bahr and Ibn Raslaan ﴿رحمه الله﴾ in Sharhus-Sunan. But there is controversy as to whom among the general family (of the Prophet ﴿ﷺ﴾) is Zakat unlawful to. The better opinion is that it is Banu Hashim and that their allies share in the ruling that affects them. As for the assertion that Zakat is forbidden to the rich and the strong who can make strivings for livelihood, the proof for that is what has come in the authentic narrations on the authority of a number (of Companions of the Messenger of Allah ﴿ﷺ﴾) that: Zakat is not lawful to the rich and he that has a strong might.

In the wording of Ahmad and the collectors of Sunan that is recorded on the authority of Abdullahr bin Adiyy bin Al-Khiyaar, from the Messenger of Allah ﴿ﷺ﴾ it goes thus:

وَلَا حَظَّ فِيهَا لِغَنِيٍّ وَلَا لِقَوِيٍّ مُكْتَسِبٍ

There is no portion of it (Zakat) for the rich and a strong and capable person getting his means for livelihood.

In some reports, it goes thus: (nor for) he that has a strong might.

What is referred to as strong might is strength and sharpness of the intelligence (that can assist him get his living); that is what Al-Jauhari (the linguist) says.

باب صَدَقةُ الفِطْر

Chapter 4.9 Zakat al-Fitr

The Obligatory Alms after the End of Fasting



It is a measure of Sa[12] from known staples; and it is to be given on behalf of each person (who is a Muslim). Its obligation lies upon the master of a slave and the one who provides for the young ones (in his care) and other people similar to those. It will be given before going out for the Eid Salah. It is not obligatory upon whoever cannot take care of his feeding for a day and night. The Zakat al-Fitr to be distributed as the (obligatory) Zakat is distributed.

Explanation:

I say: As for the assertion that it is a measure of Sa from known staples, and to be given by every Muslim, the proof for that is the hadith recorded on the authority of Ibn Umar ﷺ as contained in the Sahihayn and some other works; he said: 'The Messenger of Allah ﷺ made Zakat al-Fitr of Ramadan obligatory, a measure of Sa of dates or barley; upon the slaves (due from their masters), free people, males, females, young and old ones among the Muslims.

There are several other Ahadith under the section.

There is one in Sahih Muslim and some other books [that goes thus]:

لَيْسَ عَلَى المُسْلِمِ فِي عَبْدِهِ صَدَقَةٌ إِلَّا صَدَقَةُ الفِطْر

Zakat is not obligatory on any Muslim to give it on behalf of his slave except Zakat al-Fitr.

Al-Daraqutni and Al-Bayhaqi recorded a hadith on the authority of Ibn Umar ﷺ who said: The Messenger of Allah commanded the giving of Zakat al-Fitr on behalf of the young and old ones, free people and slaves, whom one takes take care of.

12 Which equals four mudds. A mudd is a standard of measurement of grains and liquid laid down by the Messenger of Allah ﷺ.

Al-Daraqutni also recorded the like of the above narration on the authority of Alir bin Abi Talib ﷺ. There is however weakness in its chain; there are several routes for the hadith.

The commands as regards those who are not religiously responsible are in reality with respect to those who are religiously responsible.

The view of the majority of the scholars such Al-Imam Ahmad and Al-Shafi'i is that the Zakat al-Fitr to be given is a measure of Sa of wheat and other staples.

Some Companions (of the Messenger of Allah ﷺ) are of the view that the Zakat al-Fitr to be given of wheat is half a measure of Sa. That is what Al-Mundhir related on the authority of Ali (bin Abi Talib), Uthman (bin Affan), Abu Hurairah, Jabir, Ibn Abbas, Ibn Az-Zubayr, and his mother, Asma bint Abu Bakr ﷺ; the reports have come from them with authentic chains as Al-Haafidh Ibn Hajr ﷺ stated. That is also the opinion of Zaid bin Ali, so also is the opinion of Imam Yahya and Abu Hanifah ﷺ. That is what the author of Al-Bahr related too. Those scholars hold to the hadith recorded on the authority of Ibn Abbas ﷺ from the Messenger of Allah ﷺ that he ﷺ said:

صَدَقَةُ الفِطْرِ مُدَّان مِن قَمْحٍ

Zakat al-Fitr is two mudds from wheat

Al-Hakim recorded the above hadith. At-Tirmidhi also recorded the like of it on the authority of Amr ibn Shuaib from his father, who also reported from his father ﷺ from the Messenger of Allah ﷺ. Several Ahadith under this section give weight to that view.

As for the assertion that the Zakat al-Fitr should be given before the Eid Prayer, that is according to the hadith recorded on the authority of Ibn Umar ﷺ as found in the Sahihayn and some other books that the Messenger of Allah ﷺ commanded that Zakat al-Fitr should be given before people go out for the Eid Prayer.

Abu Dawud, Ibn Majah, Al-Daraqutni and Al-Hakim, who authenticated it, recorded a hadith on the authority of Ibn Abbas ﷺ from the Messenger of Allah ﷺ that he ﷺ said:

فَمَنْ أَدَّاهَا قبلَ الصَّلاةِ فَهِيَ زَكَاةٌ مَقْبُولَةٌ ومَنْ أَدَّاهَا بَعْدَ الصَّلاةِ فَهِيَ صَدَقَةٌ مِن الصَّدَقَاتِ

Whoever gives it (Zakatul-Fitr) before the (eid) Prayer that is an acceptable Zakat, and whoever gives it after the Prayer, that will be regarded as one of the acts of charity.

As for the assertion that Zakat al-Fitr is not obligatory for whoever cannot provide daily meal for himself, this is because if he should give out his meal for the day or part of it, he will be regarded as a person entitled to Zakat and not someone who is ought to give Zakat, that is because the Messenger of Allah ﷺ said:

أُغْنُوهُم في هَذَا اليَوْم

Make them (the poor) be sufficient today.

Al-Bayhaqi and Al-Daraqutni recorded the hadith on the authority of Ibn Umar رضي الله عنه.

If one can provide more than what he needs for a complete day, such a person must give Zakat al-Fitr provided the additional staple he has can be sufficient to give Zakatul-Fitr. This conclusion is buttressed by the fact that it is the forbiddance for someone who can provide daily meal for himself to ask people for help as recorded by Al-Imam Ahmad and Abu Dawud on the authority of Sahlr bin Al-Handhalah رضي الله عنه who reported from the Messenger of Allah ﷺ. This is because the narrations are speaking in the absolute sense; no rich or poor person was specifically mentioned.

For instance, Ahmad and Abu Dawud recorded a hadith on the authority of Abdullahr bin Thalabah رضي الله عنه who said that the Messenger of Allah ﷺ said:

صَدَقَةُ الفِطْرِ صَاعُ تَمْرٍ أَو صَاعُ شَعِيرٍ عَنْ كُلِّ رَأْسٍ، أَو صَاعُ بُرٍّ أَو قَمْحٍ بَيْنَ اثْنَيْنِ، صَغِيرٍ أَو كَبِيرٍ حُرٍّ أَو عَبْدٍ ذَكَرٍ أَو أُنْثَى غَنِيٍّ أَو فَقِيرٍ، أَمَّا غَنِيُّكُمْ فَيُزَكِّيهِ اللَّهُ وَأَمَّا فَقِيرُكُمْ فَيُرَدُّ اللّهُ عَلَيهِ أَكْثَرُ مِمَّا أَعْطَى

Zakat al-Fitr is a measure of Sa of barley, to be given on behalf of every head, or a measure of Sa of wheat on behalf of two persons; to be given by the young, the old, the free people, the slaves, males, females, the rich and the poor. As for the rich ones among you, Allah will use it (Zakatul-Fitr) to cleanse them (of their sins), but for the poor ones, perhaps Allah will return for them more than what they give.

There is a difference of opinions (from the scholars) as to what is the minimum standard whoever want to give the Zakat al-Fitr will have of staples. Some scholars say he must possess the Nisab, some say he must possess food that can take care of ten persons.

Al-Imam Malik, Al-Shafi'i, Atta, Ahmadr bin Hanbal, Ishaq and Al-Muayyad bi-lllah (in one of his two opinions); they all say, what will be considered is that the person that will give Zakat al-Fitr must possess the meal for a complete day.

As for the assertion that Zakat al-Fitr should be distributed as the Zakat (of wealth) is distributed, the proof for that is because the Messenger of Allah ﷺ called Zakat al-Fitr Zakat. That can be derived from his statement ﷺ: 'Whoever gives it before the Prayer then that it is an acceptable Zakat… Another proof is the statement of Ibn Umar رضي الله عنه that the Messenger of Allah ﷺ issued a command regarding Zakatul-Fitr. The two reports had been earlier given but it is proper that priority should be given to the poor because of the command that they should be sufficed (from asking) on that day. So, other recipients of Zakat can be considered when the items are plenty (and that enough has been given to the poor).

5 كتاب الخُمس
Book of al-Khums
One-Fifth of the War Booty

It is obligatory to taken from whatever is got from a war, so also from discovered buried items below the soil (that is called Ar-Rikaaz). This Al-Khums is not due from whatever is other than the two. The recipients of Al Khums are those mentioned in the Statement of Allah the Almighty:

وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى
وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ إِنْ كُنْتُمْ آمَنْتُمْ بِاللَّهِ وَمَا أَنْزَلْنَا عَلَى
عَبْدِنَا يَوْمَ الْفُرْقَانِ يَوْمَ الْتَقَى الْجَمْعَانِ وَاللَّهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ

And know that whatever of (war) booty that you may gain, verily one-fifth of it is assigned to Allah,[13][and to the Messenger, and to the near relatives [of the Messenger (Muhammad)], (and also) the orphans, Al-Masakin (the poor) and the wayfarer, if you have believed in Allah and in that which we sent down to Our slave (Muhammad) on the day of criterion (between right and wrong), the day when the two forces met (the Battle of Badr) – and Allah is Able to do all things. [Al-Anfaal: 41].]

Explanation:

I say: As for what is got from a war, there will be comment over that – Allah the Almighty willing – in the Book of Jihad and Sirah.

There is no difference with respect to lands and dwellings taken from the unbelievers, and what are transported from them (after a war); all those will be regarded as what has been taken in a war (as booty).

As for Al-Fayu, the booty got in a non-combat war, the ruling regarding it is mentioned in Allah's Statement:

13 From here to end of the verse quoted is not contained in the original work; but it is included for a benefit. Translator.

مَا أَفَآءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَى فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

What Allah gave as booty (Fay'u) to his Messenger from the people of the townships, [14][- it is for Allah, His Messenger, the kindred (of the Messenger – Sallallahu alayhi wa sallam), the orphans, AlMasakin (the poor), and the wayfarer, in order that it may not become a fortune used by the rich among you. And whatsoever the Messenger (Sallallahu alayhi wa sallam) gives you, take it, and whatsoever he forbids you, abstain (from it), and fear Allah. Verily, Allah is severe in punishment. [Al-Hashr: 7].

It should be noted that what is intended in Allah's Statement whatever of booty'(contained in the first verse above) is as explained by the Messenger of Allah – Sallallahu alayhi wa sallam. It does not apply to whatever is referred to as booty rather the war-booty as stated by the author of An-Nihayah and explained in some other books also. If the general meaning of booty is held to, it will be imperative to say that Al-Khums (one-fifth) applies to profits, inheritance and others gains that are literary referred to as booty. Also, if the general meaning is adopted, it will contradict the consensus. Thus what will lead to falsity is itself a falsity.

As for the obligation of Al-Khums in things that are found beneath the soil, the basis for that is the hadith recorded on the authority of Abu Hurairah ﷺ as found in the Sahihayn and some other books of hadith that the Prophet ﷺ said:

العَجْمَاءُ جُبَارٌ وَالبِئْرُ جُبَارٌ وَالمَعْدِنُ جُبَارٌ وَفِي الرِّكَازِ الخُمُسُ

There is no security on animals, so also on a well and mineral soils (if found without an owner), but there is Al-Khums (one-fifth) on a buried wealth found.

Ar-Rikaaz is the wealth buried in the time of ignorance as said by Al-Imam Malik and Al-Shafi'i. Abu Hanifah and Ath-Thawri and others said ar-Rikaaz

14 Also, the remaining part the verse is included by the translator.

are mineral resources. The view of the majority opposes the position of Abu Hanifah and Ath-Thawri. The majority view is that Ar-Rikaaz is not a mineral. They cite proof in what is contained in the hadith (earlier mentioned) as regard the difference between both as indicated by the use of conjunction but which implies the fact that they are two different things.

In Al-Qaamuus, its author says Ar-Rikaaz has the same meaning as a mineral buried beneath the soil since the Time of Ignorance.

The author of An-Nihayah says the meaning of Ar-Rikaaz occurs on the two, and that the hadith implies what is buried. This is the meaning of his statement.

As for the assertion that Al-Khums is not obligatory with regard to other things apart from what has been mentioned, this is because there is no legal proof obligating that. The principle is that matters will remain as they are until there are proofs stating otherwise.

As for the assertion that Al-Khums will be distributed as stated in the Verse, this suffices as a proof for that view.

6 كتاب الصِّيام
Book of Fasting

باب أحكام الصيام
Chapter 6.1 Rulings on Fasting

Fasting in Ramadan becomes obligatory upon sighting the crescent of Ramadan by a trustworthy person, or upon the completion of the month of Shaban (as thirty days). It is thirty days of fasting so far the crescent of Shawwal is not sighted before it completes. When the people of a town sight the crescent, it becomes obligatory on the rest of the towns within the range. It is obligatory upon the person that wants to fast to make an intention (for fasting) before the appearance of Fajr.

Explanation:

I say: Fasting in Ramadan is one of the pillars of Islam and one its obligatory aspect.

As for the assertion that it becomes obligatory upon sighting the crescent by a trustworthy person, the proof for that is the fasting of the Messenger of Allah ﷺ as well as his command to the people start fasting when Abdullah bin Umar ﷺ told him he sighted the crescent. The report is recorded by Abu Dawud, Ad-Darimi and Ibn Hibban; Ibn Hibban and Al-Hakim authenticated it. Ibn Hazm authenticated this version as well on the authority of Ibn Umar ﷺ: 'People tried to sight the new moon, I then told the Messenger of Allah that I had sighted it, the Messenger of Allah ﷺ began the fasting and he commanded the people to begin the fasting.

The Collectors of Sunan, Ibn Hibban, Al-Daraqutni, Al-Bayhaqi, and Al-Hakim recorded a hadith on the authority of Ibn Abbas ﷺ who said: A Bedouin Arab came to the Messenger of Allah ﷺ and said: 'I have sighted the crescent i.e. the crescent of Ramadan. Then the Messenger of Allah ﷺ said: Do you bear the testimony that there is none worthy of worship except Allah? The man

replied in the affirmative.' The Messenger of Allah ﷺ still said: 'Do you bear the testimony that Muhammad is the Messenger of Allah? The man also replied in the affirmative. Then the Messenger of Allah ﷺ said: O Bilal, announce among the people that they should commence the fasting tomorrow.

Al-Daraqutni and At-Tabarani recorded via the route of Tawus, who said: I witnessed in Madinah, and there was Ibn Umar and Ibn Abbas ﷺ there, when a man came to its governor and bore the testimony in his presence that he had sighted the crescent of the month of Ramadan. The governor then asked Ibn Umar and Ibn Abbass ﷺ as regard the man's testimony; he commanded him to legalize it. Then both Ibn Umar and Ibn Abbas ﷺ said: 'Indeed the Messenger of Allah ﷺ allowed the testimony of one man for the sighting of the crescent of Ramadan but would not permit the testimony for ending the fast except testimony of two men. Al-Daraqutni said: The report singly came through Hafs bin Umar al-Ubuliyy who is a weak narrator.

[Abdullah] Ibn Mubarak, Ahmad and Al-Shafi'i (in one of his two opinions) are of the view of appropriateness of working with the testimony of one man (for the commencement of fasting of Ramadan). Al-Imam an-Nawawi said: That is the most correct opinion. That is also the view of Al-Muayyad bi-llah.

Imam Malik, Al-Laythi, Al-Awzai, Ath-Thawri are of the view that two men have to bear the testimony before the commencement of fasting in the month of Ramadan. They cited a proof in the hadith recorded on the authority of AbdurRahman bin Zaid bin Al-Khattab. The narration has it that: If two Muslim men bear the testimony (that they sighted the crescent), you should commence your fasting, (and when two Muslim men equally bear the testimony at the end of the month of Ramadan that they sighted the crescent of Shawwal) you should end your fasting.' Ahmad and an-Nasa'i recorded the hadith.

In the hadith of Governor of Makkah, Al-Harith Ibn Hatib, who said: The Messenger of Allah ﷺ made it a condition for us that we should commence the hajj rites upon sighting the crescent; that if we do not sight it but two men bear the testimony that they sighted it, then we should commence the hajj rites with their testimonies.' The report is recorded by Abu Dawud and Al-Daraqutni. The latter said: 'This chain is connected and authentic.

The main thing in the two reports is that the understanding of the meaning of a condition indicates the impropriety of accepting the testimony of one man but the Ahadith talking about the acceptance of the testimony of one man is clearer than what can be understood from the two hadith.

As for the assertion that fasting can commence (alternatively) upon the completion of the counting of the days of Shaban, the proof for that is the hadith recorded on the authority of Abu Hurairah ﷺ as found in the Sahihayn and other works that he ﷺ said: The Messenger of Allah ﷺ said:

صُومُوا لِرُؤْيَتِهِ وَأَفْطِرُوا لِرُؤْيَتِهِ فَإِنْ غُمَّ عَلَيْكُمْ فَأَكْمِلُوا عِدَّةَ شَعْبَانَ ثَلَاثِينَ

Fast upon sighting the crescent (of the month of Ramadan) and end the fasting upon sighting (the crescent) but if there is a blockage by the cloud, then complete the counting (of the days) of Shaban

There are several Ahadith expressing the like of the meaning above.

As for the assertion that fasting will go on for thirty days if the crescent of the month of Shawwal is not sighted before the month completes, the proof for that is what has come in the authentic reports that when the (sighting of the) crescent is blocked by the cloud, the people would fast for thirty days. An example of such report is the hadith of Abu Hurairah ﷺ that was mentioned earlier on and the other one similar to it found in Sahih Muslim on the authority of Ibn Umar ﷺ and the hadith recorded on the authority of Ibn Abbas ﷺ as found with Ahmad, An-Nasai and At-Tirmidhi who authenticated it. So also is the hadith recorded on the authority of 'A'ishah ﷺ found with Ahmad, Abu Dawud Al-Daraqutni with a sound chain of narration. We have other Ahadith apart from the ones that have been mentioned. Those reports contain the clarity that thirty days can be completed either in Shaban, as it has come in some of the reports, or in Ramadan, as it has come in some of the reports. Some of the reports came in the absolute sense without mentioning either of the months.

As for the assertion that when the people of a town sight it, that it becomes obligatory upon the other towns within the range of the first town, the proof for that is the several clear reports that have come regarding fasting upon sighting the crescent and stopping the fast upon sighting it. This is a communication aimed at all the (members of the) Ummah. Thus whoever sights the crescent in the Ummah regardless of his location that will serve as the sighting for all. As for the correctness of the proof of anyone who make evidence with the hadith of Kurayb as found with Muslim (in his Sahih) and some other writers of hadith, wherein he stated that the month of Ramadan began while he was in Shaam (the Greater Syria), the crescent was sighted in the night of Jumu'ah (Friday). When he arrived at Madinah and informed Ibn Abbas ﷺ of that, the latter said: But we sighted it in the night of Sabt (Saturday); we will continue to fast such that we will fast for thirty days or we sight the crescent. Ibn Abbas ﷺ said therein: This is the command of the Messenger of Allah ﷺ.

There are other versions of the report but the report is not sound because Ibn Abbas ﷺ did not state clearly that the Prophet ﷺ commanded them not to act with the sighting of other people in other regions but what Ibn Abbas

(ﷺ) intended was that the Messenger of Allah (ﷺ) commanded them to complete the thirty days or consider their sighting if they did, to mean that Ibn Abbas (ﷺ) thought that what is intended by sighting is sighting of the people of a place. The error of citing this as a proof has made people to fall into confusion and mix-up such that people became divided into eight schools-of-thought over it. I have explained the issue in the work which I named Itlaau arbaab al-kamaal alaa maa fee risaalah al-Jalaal fee al-hilaal min al-ikhtilaal.

As for the assertion that the person that wants to fast must have the intention of fasting before the Fajr (i.e. dawn), the proof for that is the hadith recorded on the authority of Hafsah (one of the wives of the Messenger of Allah (ﷺ) that the Messenger of Allah (ﷺ) said:


مَنْ لَمْ يُجْمِعِ الصِّيَامَ قَبْلَ الْفَجْرِ فَلا صِيَامَ لَهُ

Whoever did not make the intention of fasting before the Fajr has no fast.

The hadith is recorded by Ahmad, the Collectors of Sunan, Ibn Khuzaymah, and Ibn Hibban – both the last two authenticated it.

The hadith is not negated by the version of the person that related it as a statement of a Companion; reporting it as a statement of the Messenger of Allah (ﷺ) is an addition. It becomes obligatory to accept it as the people of fundamentals and some scholars of hadith have said. That is also the view of a number of people of knowledge. Others that have a contrary view do not come with a proof that can stand.

As for the hadith wherein the Messenger of Allah (ﷺ) commanded that whoever woke up (among the Companions) as a person fasting should complete his fasting, on the day of Aashura, what is contained in the hadith is that whoever does not know that the fasting has become obligatory except after the noon has set in, that will serve as an excuse for him for not making the intention from the night.

As for the hadith that the Messenger of Allah (ﷺ) entered upon one of his wives and said:


هَلْ عِنْدَكُمْ مِنْ شَيْءٍ

Do you have anything (I can eat)

And they replied in the negative upon which he ﷺ said:

فَإِنِّي صَائِمٌ

Then I am fasting.

The report above has to do with non-obligatory fasting and it is narrated by Muslim and others.

باب مبطلات الصَّوم

Chapter 6.2 Nullifiers of Fasting



Fasting is spoiled by eating, drinking, sexual intercourse, and intentional act of vomiting. It is forbidden to combine two or many days fasting without breaking in between. It is upon whoever breaks his fast intentionally to carry out expiation similar to that of a person guilty of Dhihaar (the act of likening one's wife to one's mother in terms of conjugal rights). It is recommended to hasten the breaking of fast and to delay Sahuur (the pre-dawn meal).

Explanation:

I say: As for the assertion that fasting is spoiled by intentional eating and drinking, there is no controversy over that. As for when that is done out of forgetfulness, then the fasting is intact due to the proof that is contained in the Sahihayn and some other books in the hadith recorded on the authority of Abu Hurairah ﴿رضي الله عنه﴾ who said the Messenger of Allah ﴿ﷺ﴾ said:

مَنْ نَسِيَ وَهُوَ صَائِمٌ فَأَكَلَ أَوْ شَرِبَ فَلْيُتِمَّ صَوْمَهُ فَإِنَّمَا أَطْعَمَهُ اللَّهُ وَسَقَاهُ

Whoever forgets and eats or drinks while he is fasting should complete his fasting, it is Allah Who has fed him and gave him drink.

In the version of Al-Daraqutni, with a sound chain of transmission, it goes thus:

فَإِنَّمَا هُوَ رِزْقٌ سَاقَهُ اللَّهُ إِلَيهِ وَلَا قَضَاءَ عَلَيهِ

That is a provision Allah bestow on him, there is no make-up upon him.

In another version of Al-Daraqutni, Ibn Khuzaymah, Ibn Hibban and Al-Hakim, it goes thus:

مَنْ أَفْطَرَ يَوماً مِنْ رَمَضَانَ نَاسِياً فَلا قَضَاءَ عَلَيهِ وَلَا كَفَّارَةَ

Whoever breaks a day of fasting in Ramadan out of forgetfulness, there is no make-up or expiation on him.

The chain of the above report is also sound; this becomes consensus over the issue, there is no controversy as regards the fact that intentional eating and eating spoil fasting. But if it is due to forgetfulness, some people of knowledge equate that with a person that eats or drinks out of forgetfulness and they hold to the statement of the Messenger of Allah ﷺ as it has come in another version: Whoever breaks a day in Ramadan out of forgetfulness, there is no make-up upon him nor expiation.' Some other people of knowledge do not agree to equate it.

As for intentional act of vomiting, the proof for that is the hadith recorded on the authority of Abu Hurairah ﷺ that the Prophet ﷺ said:

مَنْ ذَرَعَهُ القَيءُ فَلَيْسَ عَلَيهِ قَضَاءٌ ومَن اسْتَقَاءَ عَمْداً فليَقْضِ

Whoever is overpowered by vomit (such that he vomited), there is no make-up due upon him. But whoever induces vomiting must make-up for the day.

The hadith above is recorded by Ahmad, Abu Dawud, At-Tirmidhi, Ibn Majah, Ibn Hibban, Al-Daraqutni, and Al-Hakim that authenticated it.

Ibn Al-Mundhir related that there is a consensus over the fact that whoever vomits intentionally has his fast spoiled. There is a reservation against that because Ibn Mas'ud, Ikrimah, Rabiah, Al-Haadi and Al-Qasim said that vomiting does not spoil the fasting whether it is due to its overpowering or it is induced so far none of what is vomited is not regurgitated while the person knows. They cite proof in the following hadith: three things do not vitiate the fasting: Vomiting, cupping and wet-dreaming. The hadith is recorded by At-Tirmidhi on the authority of Abu Sa'id but there is AbdurRahman bin Zaid bin Aslam in its chain; he is weak.

Taken that the hadith is sound as a proof, it does not contradict the hadith recorded on the authority of Abu Hurairah ﷺ (earlier mentioned) because the former is talking in an absolute sense while the latter is specific with mention of intentional.

As for the assertion that it is forbidden to combine fasting of days, the proof for that is the prohibition of the Messenger of Allah ﷺ in that regard as it has come in the hadith recorded on the authority of Abu Hurairah, Ibn Umar and 'A'ishah رضي الله عنهم as found in the Sahihayn and some other books of hadith.

Also under this section, there are several other Ahadith.

As for the assertion that it is obligatory on a person who breaks his fast intentionally to expiate, the proof for that is the hadith related about the man who copulated with his wife in the afternoon of Ramadan. The Prophet ﷺ told the man:

هَلْ تَجِدُ مَا تُعْتِقُ رَقَبَةً

Do you have what you can manumit a slave with?

The man replied in the negative.

The Prophet ﷺ still said:

فَهَلْ تَسْتَطِيعُ أَنْ تَصُومَ شَهْرَيْنِ مُتَتَابِعَيْنِ

Can you fast for two months consecutively?

The man still replied in the negative.

The Prophet ﷺ then said:

فَهَلْ تَجِدُ مَا تُطْعِمُ سِتِّينَ مِسْكِيناً

Do you have what you can feed sixty poor persons with?

The man replied in the negative.

Then a basket of dates was brought to the Messenger of Allah ﷺ. He ﷺ asked the man to give the dates as charity. The man replied: Is it upon the

person who is poorer than us? Indeed there is no household as needy as ours from the beginning to the end of the city. The Messenger of Allah ﷺ laughed such that his molars was seen then he told the man: Go and feed your family with it.

The hadith can be found in the Sahihayn and some other works in the hadith recorded on the authority of Abu Hurairah and 'A'ishah ﷺ.

There is an opinion that expiation is not due from a person that breaks his fast intentionally irrespective of the cause; the only an act of sexual intercourse that necessitates expiation is that. But the man, in the story earlier mentioned, only copulated with his wife; there is nothing in the act of copulation in the afternoon of Ramadan except what is in eating and drinking because all the acts are ordinarily permissible, none of them will be forbidden except when it occurs in the course of fasting. It also occurs in one of the versions of the hadith that the man broke his fast and copulation was not mentioned.

As for the assertion that it is meritorious to hasten the breaking of fast (at sunset) and to delay the pre-dawn meal, the proof for that is the hadith recorded on the authority of Sahl bin Sad ﷺ that the Prophet ﷺ said:

لَا يَزَالُ النَّاسُ بِخَيرٍ مَا عَجَّلُوا الفِطْرَ

People will not cease to be upon goodness so far they hasten the breaking of fast.

The hadith can be found in the Sahihayn and other works.

Also on the authority of Abu Dharr ﷺ that the Prophet ﷺ said:

لَا تَزَالُ أُمَّتِي بِخَيرٍ مَا أَخَّرُوا السُّحُورَ وعَجَّلُوا الفِطْرَ

My people will not cease to be upon goodness so far they delay the pre-dawn meal and hasten the breaking of fast.

Ahmad recorded the hadith but there is Salman bin Abi Uthman in its chain; Abu Hatim said: He is unknown. But it has been established in the Sahihayn and some other works, a hadith recorded on the authority of Zaid bin Thabit ﷺ, that the distance between the pre-dawn meal of the Messenger of Allah ﷺ and his commencement of Prayer is a distance of recitation of fifty Verses.

There are other Ahadith under the section.

باب قضاء الصَّوم

Chapter 6.3 Missed Fasts and Respite of Non-Fasting for a Traveller



It is obligatory upon whoever breaks his fast for legal reason to make up the missed days. There is respite of not fasting for a traveller and those like him except he fears for any wreck (in the course of journey) or weakness during fighting, then it is imperative he leaves the fast. Whoever dies and has missed days of fasting upon him, his guardian (relative) will fast on his behalf. As for an old person who is incapable of fasting and cannot make up the missed days, he will expiate for his fasting by feeding a poor person for each missed day.

Explanation:

I say: As for the obligation of making up the missed days for whoever breaks his fasting for a legal reason like a traveller and a sick person, the Noble Qur'an has explicitly ruled on that:

فَمَنْ كَانَ مِنْكُمْ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ

...but if any of you is ill or on a journey, the same number (should be made up) from other days... [Al-Baqarah: 184].

The hadith reported by Muaadhah on the authority of 'A'ishah ﴿رضي الله عنها﴾ has come on the issue of women menstrual period (in Ramadan; that the woman in her period will not fast but will make up the missed days). The hadith has been earlier mentioned; so also are the women in post-partum period.

As for the assertion that a traveller is allowed to break his fast but that it is better for him to fast except if he fears for any wreck or weakness during fighting, the proof for that are many, among which is the statement of the Messenger of Allah ﴿ﷺ﴾ that goes as follows:

إِنْ شِئْتَ فَصُمْ وإِنْ شِئْتَ فَأَفْطِرْ

If you like you fast and if you like you break your fast.

He ﷺ said the above when Hamzah bin Amr Al-Aslamiyy ﷺ asked him regarding fasting on journeys. The hadith can be found in the Sahihayn on the authority of 'A'ishah ﷺ.

There is another hadith in the Sahihayn recorded on the authority of Anas bin Malik ﷺ that he said: We used to be on journeys with the Messenger of Allah ﷺ the person fasting (among us) would not berate the who does not, nor would he does not fast berate the fasting person.

Muslim and other writers recorded on the authority of Hamzah bin Amr Al-Aslamiyy ﷺ that he said: O Messenger of Allah, I have the power to fast (on journeys), is there any fault upon me? the Messenger of Allah ﷺ then said: 'It is a respite from Allah, whoever takes it that is better, but whoever wishes to fast there is no blame upon him.

Also in the Sahihayn on the authority of Jabir Ibn Abdillah ﷺ who said: The Messenger of Allah ﷺ was on a journey then he saw a crowd and a man being shaded (by them), he enquired: What is this? They replied: A fasting person. Then he ﷺ said:

لَيْسَ مِنَ البِرِّ الصِّيَامُ فِي السَّفَرْ

Fasting on journeys is not of piety.

Muslim, Ahmad, and Abu Dawud also recorded on the authority of Abu Sa'id ﷺ who said: We travelled with the Messenger of Allah ﷺ to Makkah while we were fasting. He said: we descended in a place then the Messenger of Allah ﷺ said:

إِنَّكُمْ قَدْ دَنَوْتُم مِن عَدُوِّكُمْ والفِطْرُ أَقْوَى لَكُمْ

Verily you are close to your enemy; that you break your fast will make you stronger.

Abu Sa'id ﷺ said: Then came the respite; there was among us those who fasted and those who did no fast. Then we arrived in another place and he ﷺ said:

إِنَّكُمْ مُصَبِّحُونَ عَدُوَّكُمْ والفِطْرُ أَقْوَى لَكُمْ فأَفْطِرُواْ

Verily you will come upon your enemy in the morning; that you do not fast will make you stronger, so do not fast.

Abu Sa'id ﷺ said: Then it became a rigour to fast. After that we would fast alongside the Messenger of Allah ﷺ while we were on journeys.

It is the opinion of the majority of the scholars that fasting is a respite on journeys. There is a report from some of the Literalists, it is also related from Abu Hurairah ﷺ and the Imaamiyyah Sect that breaking the fast is obligatory while on a journey; that whoever fasts on a journey will not have the reward thereof.

As for those like a traveller, those intended are the pregnant women and the nursing mothers due to what Ahmad and the Collectors of Sunan recorded, which At-Tirmidhi held to be hasan, on the authority of Anas bin Malik Al-Kabiyy ﷺ that the Messenger of Allah ﷺ said:

إنَّ اللَّهَ عَزَّ وجَلَّ وَضَعَ عَن المُسَافِرِ الصَّومَ وشَطْرَ الصَّلاةِ وعَن الحُبْلَى والمُرْضِعِ الصَّومَ

Verily Allah The Almighty and The Most exalted removes fasting and half of the Prayer for a traveller; and He removes fasting for a pregnant woman and a nursing mother.

As for the assertion that whoever dies and has some days of fasting upon him that his guardian will observe the fast on his behalf, the proof for that is the hadith recorded on the authority of 'A'ishah ﷺ as found in the Sahihayn and some other works that the Messenger of Allah ﷺ said:

مَنْ مَاتَ وعليْهِ صِيَامٌ صَامَ عَنْهُ وَلِيُّهُ

Whoever dies and has fasts upon him, his guardian should observe the fasts on his behalf.

Al-Bazzar has an addition of a statement that goes thus: If he wills.

The author of Majmauz-Zawaaid said: The chain of the (additional) report is hasan. So also said some scholars of hadith and some members of Shafii School-of-Thought, so also Abu Thawr, As-Sadiq, An-Nasir, Al-Muayyad bi-Llah, Al-Awzai and Ahmad bin Hanbal ﴿رحمهم الله﴾.

Al-Bayhaqi said in Al-Khilaafiyaat: This is an established Sunnah; I do not know any difference of opinion among the scholars as regard its authenticity.

The majority of the jurists are however of the opinion that it is not obligatory upon a guardian to fast on behalf of his dead relative.

As for the assertion that an old person who cannot fast or make up for the missed days of fasting will expiate with what was mentioned, the proof for that is the hadith recorded on the authority of Salamah bin Al-Akwa ﴿رضي الله عنه﴾ that is established in the Sahihayn and other books wherein he (Salamah) said: This Verse: ...and as for those who can fast with difficulty, they have (a choice either to fast or) to feed a poor person (for every day)... was revealed, whoever did not want to fast would feed (a poor person) instead until the Verse that came after it was revealed which came to abrogate it. This hadith is recorded by Ahmad and Abu Dawud on the authority of Muadh but it is like the hadith that was earlier mentioned. Meanwhile there is an addition: Then Allah revealed this Verse:...So whoever of you sights (the crescent of) the month (of Ramadan), he must observe Saum (fasts) that month... thus Allah established the fasting in the month upon those at home who are healthy, but gave respite therein to those who are sick and the travellers. Feeding the poor became established for the old ones who cannot fast.

Al-Bukhari recorded on the authority of Ibn Abbas ﴿رضي الله عنهما﴾ that he said: The Verse is not abrogated; it (the respite therein) is for the old men and women who cannot fast, thus, each of them will feed a poor person in lieu of each day.

Abu Dawud also recorded on the authority of Ibn Abbas ﴿رضي الله عنهما﴾ that he said: It became established for the pregnant women and the nursing mothers to refrain from fasting but feed a poor person in lieu of each day.

Al-Daraqutni and Al-Hakim recorded a hadith, which both of them held to be

authentic, on the authority of Ibn Abbas ﴿ﷺ﴾ that he said: It was made a respite for an old man (and woman) to refrain from fasting but should feed a poor person in lieu of each day; he need not make up for the day. This statement from Ibn Abbas ﴿ﷺ﴾ is an explanation of what is contained in the Qur'an, this statement can be taken as an actual statement of the Messenger of Allah ﴿ﷺ﴾ that will therefore serve as a proof that expiation is feeding a poor person for each missed day for this category of people: an old man and woman, a pregnant woman, and a nursing mother.

بَاب صَوْم التَّطَوُّع

Chapter 6.4 Voluntary Fasts



It is recommended to fast six days in Shawwal, on the ninth day of Dhul-Hijjah, so also in Muharram and Shaban, on Mondays and Thursdays, and in the White Days (13th, 14th, and 15th days of the lunar month). The best of supererogatory fasts is fasting in the alternate days. It is detested to fast all year round or to single out Fridays or Saturdays for fast. It is (however) forbidden to fast on the days of the two Eids, so also the three days after the Day of Sacrifice, and it is forbidden to fast a day or two days before the month of Ramadan.

Explanation:

I say: As for the six days of fasting in Shawwal, the proof for it is the hadith that goes thus:

مَنْ صَامَ رَمَضَانَ ثُمَّ أَتْبَعَهُ سِتًّا مِنْ شَوَّالٍ فَذَاكَ صِيَام الدَّهْرِ

Whoever fasts Ramadan then follows it with six days of fasting in Shawwal, that will be equal to fasting for a year.

Muslim and others recorded the hadith on the authority of Abu Ayyub ﷺ.

There are many other Ahadith under the section.

As for fasting on ninth day of Dhul-Hijjah, the proof for that is what has come authentically from the Messenger of Allah ﷺ in the hadith recorded on the authority of Hafsah ﷺ as found with Ahmad and An-Nasai that she ﷺ said: There are four acts the Messenger of Allah ﷺ never abandoned: Fasting on the day of Aashura, the tenth (of Dhul-Hijjah) and three days in each month.

Abu Dawud recorded the hadith in this version: He used to fast on the ninth of Dhul-Hijjah, the day of Aashura and three days fasting in each month, and the first Monday and Thursday of the month.

But Muslim recorded on the authority of 'A'ishah ﷺ who said: 'I did not see the Messenger of Allah ﷺ fast at all in the ten days (of Dhul-Hijjah). In a version, [she said ﷺ: He never fasted the ten days.' That 'A'ishah ﷺ didn't

see the Prophet ﷺ did so does not imply that the Messenger of Allah ﷺ did not do so.

And the most established fast in the ten days is the fasting on the ninth day; the Day of Aashura. The fasting on this day is established in Sahih Muslim and some other works in the hadith recorded on the authority of Abu Qatadah ﷺ who said: The Messenger of Allah ﷺ said:

صَوْمُ يَوْمِ عَرَفَةَ يُكَفِّرُ سَنَتَيْنِ مَاضِيَةً وَمُسْتَقْبَلَةً ، وَصَوْمُ يَوْمِ عَاشُورَاءَ يُكَفِّرُ سَنَةً مَاضِيَةً

Fasting on the Day of Arafah expiates two years (sins), the immediate past year and next, while fasting on the Day of Aashura expiates its immediate past year (sin).

As for fasting in the month of Muharram, the proof for that is the hadith recorded on the authority of Abu Hurairah ﷺ as found with Ahmad, Muslim and the Collectors of Sunan that he ﷺ was asked which fast after Ramadan is better he ﷺ replied: Month of Allah (that is called) al-Muharram.

The most established fasting in the Muharram is the fasting of Aashura due to the Ahadith found in the Sahihayn and some other works reported by a number of the Companions that he ﷺ fasted on the day and commanded that it is fasted, he ﷺ said:

هَذَا يَوْمُ عَاشُورَاءَ لَمْ يُكْتَبْ عَلَيْكُمْ صِيَامهُ وَأَنَا صَائِمٌ فَمَنْ شَاءَ صَامَ وَمَنْ شَاءَ فَلْيُفْطِرْ

This is the day of Aashura; its fasting has not been made compulsory upon you but I am fasting, so whoever wishes should fast and whoever does not should leave it.

It has been earlier stated that fasting on the day of Aashura expiates the sins of its immediate past year. It has also been established in Sahih Muslim and some other books that when he ﷺ commanded that its fast should be observed, the people said: O Messenger of Allah, this is a day which the Jews and Christians extol. Then he ﷺ replied: In the coming year we shall – Allah willing – fast on the ninth day (together with it) But the year did not come before the Messenger of Allah ﷺ died.

As for fasting in the month of Shaban, the proof for that is the hadith recorded on the authority of Umm Salamah ﴿ﷺ﴾ that the Messenger of Allah ﴿ﷺ﴾ would not fast a complete month in a year except the month of Shaban; he ﴿ﷺ﴾ used to merge it with Ramadan. Ahmad and the Collectors of Sunan recorded the hadith; At-Tirmidhi held it to be hasan.

In the Sahihayn, there is a hadith recorded on the authority of 'A'ishah ﴿ﷺ﴾ that the Messenger of Allah ﴿ﷺ﴾ would fast in the month of Shaban the way he would not do in the other months; he would fast in Shaban except for some days, rather he would fast it all. In a version, she ﴿ﷺ﴾ said: I never saw him fast much in other months as he used to do in Shaban.

As for fasting on Mondays and Thursdays, the proof for that is the hadith recorded on the authority of 'A'ishah ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ used to make sure he fasted on Mondays and Thursdays. Ahmad, At-Tirmidhi, An-Nasai, Ibn Majah and Ibn Hibban recorded it. Both At-Tirmidhi and Ibn Hibban held the hadith to be authentic.

Abu Dawud also recorded a similar report in the hadith reported on the authority of Usamah bin Zaid ﴿ﷺ﴾. An-Nasai also recorded the hadith but there is an unknown narrator in its chain though Ibn Khuzaymah held it to be authentic.

Ahmad and At-Tirmidhi recorded a hadith on the authority of Abu Hurairah ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ said:

تُعْرَضُ الأَعْمَالُ كُلَّ اثْنَيْنِ وخَمِيس فَأُحِبُّ أَن يُعْرَضَ عَمَلِي وَأَنَا صَائِمٌ

Deeds are taken up on Mondays and Thursdays; thus I love that my deeds are taken up while I am fasting.

Also it has come in Sahih Muslim that the Prophet ﴿ﷺ﴾ was asked regarding he fasting on Mondays, he ﴿ﷺ﴾ replied:

ذَلِكَ يَومٌ وُلِدْتُ فِيهِ وأُنْزِلَ عَلَيَّ فِيهِ

That was the day I was born and (the day I began) to receive the revelation.

As for fasting on the White Days, the proof for that is the hadith recorded on the authority of Abu Qatadah ﷺ as found with Muslim and some other writers; that Abu Qatadah ﷺ said: The Messenger of Allah ﷺ said:

ثَلاثٌ مِنْ كُلِّ شَهْرٍ وَرَمَضَانُ إلى رَمَضَان فَهَذا صِيَامُ الدَّهْرِ كُلِّهِ

Three days of fasting in every month, Ramadan to another Ramadan; these all constitute the fast of a year.

An-Nasai, At-Tirmidhi and Ibn Hibban (which he authenticated) recorded a hadith on the authority of Abu Dharr ﷺ who said: The Messenger of Allah ﷺ said:

إِذَا صُمْتَ مِنَ الشَّهْرِ ثَلاثَةَ أَيَّامٍ فَصُمْ ثَلاثَ عَشْرَةَ وَأَرْبَعَ عَشْرَةَ وَخَمسَ عَشْرَةَ

If you want to fast in a month, fast on the 13th, 14th, and 15th days.

There are many other Ahadith under the section.

As for the assertion that the best of the supererogatory fasts is fasting on the alternate days, the proof for that is the hadith recorded on the authority of Abdullah ibn Amr ﷺ as found in the Sahihayn and some other works that the Messenger of Allah ﷺ told him:

صُمْ فِي كُلِّ شَهْرٍ ثَلَاثَة

Observe three days fasting in each month.

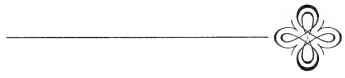
Abdullah ﷺ said: I have the strength to observe more than that; but the Messenger of Allah ﷺ did not cease to increase (the days) for him until he said finally:

صُمْ يَوْماً وأَفْطِرْ يَوماً فَإِنَّهُ أَفْضَلُ الصِّيَامِ وَهُوَ صَوْمُ أَخِي دَاوُدَ عَلَيهِ السَّلَام

Observe fast on the alternate days, indeed that is the best of the fasting; it is the fast of my brother Dawud – peace be upon him.

باب ما يكره صومه

Chapter 6.5 Days that Fasting is not Recommended



As for the assertion that it is detested to fast all year round, the proof for that is the hadith of Abdullah ibn Amr ﷺ who said the Messenger of Allah ﷺ said:

لَا صَامَ مَنْ صَامَ الأَبَدَ

He that fasts continuously (all the year round) has no fast.

Ahmad, Ibn Hibban, Ibn Khuzaymah, Al-Bayhaqi and Ibn Abi Shaybah recorded a hadith on the authority of Abu Musa ﷺ who reported the Prophet ﷺ to have said:

مَنْ صَامَ الدَّهْرَ ضُيِّقَتْ عَلَيْهِ جَهَنَّمُ هَكَذَا

Whoever observes fast continuously, the hell will be constrained on him like this.

Upon saying that, the Messenger of Allah ﷺ held his fists together.

In the version of Ibn Hibban, it goes thus:

ضُيِّقَتْ عَلَيهِ جَهَنَّمُ هَكَذَا وعَقَدَ تِسْعِينَ

The hell would be constrained on them like this.

As for the assertion that it is detested to single out the day of Jumu'ah for fasting, the proof for that is the hadith recorded on the authority of Jabir ﷺ

as found in the Sahihayn and some other works that the Prophet ﷺ forbade fasting on the day of Jumu'ah. In a version; he forbade singly it out for fasting.

Also in the Sahihayn on the authority of Abu Hurairah, he ﷺ said:

لَا تَصُومُوا يَومَ الجُمُعَةِ إِلَّا وَقَبْلَه يَومٌ أَو بَعْدَه يَومٌ

Do not observe fast on the day of Jumu'ah unless you fast a day before or after it.

In the version of Muslim, he ﷺ said:

لَا تَخُصُّوا لَيلَةَ الجُمُعَةِ بِقِيَامٍ مِن بَينِ اللَّيَالِي وَلَا تَخُصُّوا يَومَ الجُمُعَةِ بِصِيامٍ مِن بَينِ الأَيَّامِ إلا أَن يَكُونَ فِي صَومٍ يَصُومُه أَحَدُكُم

Do not specify the night of Jumu'ah – out of nights – for standing up in prayer, and do not specify the day of Jumu'ah – out of days – for fasting except if the day is a normal day of fasting for any of you.

There are many other Ahadith under the section.

As for the dislike of singly fasting on Saturdays, the proof for that is the hadith recorded on the authority of As-Samaa bint Bushr as found with Ahmad, Abu Dawud, At-Tirmidhi, Ibn Majah, Ibn Hibban, Al-Hakim, At-Tabarani and Al-Bayhaqi (who authenticated it); bin as-Sakan also held it to be authentic; that the Messenger of Allah ﷺ said:

لَا تَصُومُوا يَومَ السَّبْتِ إِلَّا فِيمَا افْتُرِضَ عَلَيكُمْ فَإِنْ لَمْ يَجِدْ أَحَدُكُمْ إِلَّا عُودَ عِنَبٍ أو لِحاءَ شَجَرٍ فَلْيَمْضُغْه

Do not fast on Saturdays except the fasts that have been made obligatory upon you, if any of you cannot get what to eat except the stick of a bunch of grapes or the bark of a tree let him chew it.

باب ما يحرم صومه

Chapter 6.6 Forbidden Days of Fasting



As for the assertion that it is forbidden to fast on the days of the two Eids, the proof for that is the hadith recorded on the authority of Abu Sa'id, as found in the Sahihayn and some other works, from the Messenger of Allah ﷺ that he ﷺ forbade fasting on the day of Eid al-Fitr and Eid al-Adha. There is a consensus of Muslim scholars over that.

As for the assertion that it is forbidden to fast on the three days after the day of sacrifice, that is due to the forbiddance from the Messenger of Allah ﷺ as regard fasting in those days as it has come authentically via a number of Companions of the Messenger of Allah ﷺ. I have mentioned all the Ahadith over that in Sharh al-Muntaqaa.

As for the assertion that it is forbidden to meet the month of Ramadan with a day or two days fasting, the proof for that is the hadith recorded on the authority of Abu Hurairah ﷺ as found in the Sahihayn and other works that he ﷺ said that the Messenger of Allah ﷺ said:

لَا يَتَقَدَّمَنَّ أَحَدُكُمْ رَمَضانَ بِصَومِ يَومٍ أَوْ يَومَينِ إِلَّا أَنْ يَكونَ رَجُلًا كانَ يَصُومُ صَومًا فَلْيَصُمْهُ

None of you should meet the month of Ramadan with a day or two days fasting except someone who has the days of his voluntary fasting coincides with the day, then he can fast on the day.

The hadith recorded on the authority of Abu Hurairah ﷺ from the Messenger of Allah ﷺ gives weight to that; it is recorded by the Collectors of Sunan; Ibn Hibban and some other scholars rated it authentic, it goes thus:

إِذَا انْتَصَفَ شَعْبَانُ فَلا تَصُومُوا

When the month of Shaban gets to the half do not fast.

There are many other Ahadith under the section. The controversy over the issue is a very long one; it is extensively discussed in some large works.

باب الاعْتكَاف

Chapter 6.7 I'tikaf

Seclusion in Masjid



It is legal to carry it out at all times in the masjids but it becomes stronger in Ramadan especially in the last ten days. It is recommended to strive hard in the acts (of obedience) therein, so also is standing in prayer in the night seeking for Night of Decree; a person carrying out I'tikaf cannot go out except for a need.

Explanation:

I say: There is no difference of opinion as regards the legality of I'tikaf. The Prophet ﷺ used to carry out I'tikaf in the last ten days of Ramadan until Allah caused his death as it has come in the Sahihayn and some other works in the hadith recorded on the authority of Abu Hurairah رضي الله عنه.

As for the assertion that it can be carried out at all times in the masjids, that is due to the fact that it has been made desirous (by the Shari'ah). And there is no evidence specifying it for a particular time.

In the Sahihayn, it has come on the authority of Umar رضي الله عنه that he asked the Prophet ﷺ as follows: I made a vow in the Time of Ignorance that I would carry out a seclusion for a night in the Sacred Masjid. The Messenger of Allah ﷺ replied:



Fulfil your vow.

As for the assertion that it can only be carried out in the masjids, this is because that is the meaning of I'tikaf in the Islamic legal parlance, because any person that carries out I'tikaf in any other place will not be called a mutakif (someone in a state of seclusion) in the understanding of the Shari'ah. There has come a proof indicating that, the like of this hadith

لَا اعْتِكَافَ إِلَّا فِي مَسْجِدِ جَمَاعَةٍ

There is no I'tikaf except in a masjid where the congregational prayer is observed.

Ibn Abi Shaybah and Said bin Mansuur recorded the above hadith on the authority of Hudhayfah [bin Yaman] ﷺ.

As for the assertion that the legality of I'tikaf becomes stronger in the month of Ramadan especially in the last ten days of the month; the proof for that is the practice of the Prophet ﷺ, he used to carry out I'tikaf in this period, but nothing has come as a proof indicating that it must be for a specific number of days, nor is there is any proof that it must be accompanied with fasting, what seems to indicate that is a statement of 'A'ishah ﷺ but the hadith of Umar's vow proved it wrong. So also the hadith recorded on the authority of Ibn Abbas ﷺ that the Prophet ﷺ said:

لَيْسَ عَلَى المُعْتَكِفِ صِيَامٌ إِلَّا أَنْ يَجْعَلَه عَلى نَفْسِهِ

Fasting is not obligatory upon whoever is carrying out I'tikaf except if he chooses to do so.

Al-Daraqutni and Al-Hakim recorded the hadith; the latter said: Its chain is authentic. But Al-Daraqutni and Al-Bayhaqi prefer saying it is a statement of a Companion (to saying it is a statement of the Messenger of Allah ﷺ.

In a nutshell, there is no proof except in what has come authentically as his statement ﷺ and nothing has been established from him ﷺ indicating that there should be no I'tikaf except with fasting, rather a contrary evidence has come authentically from him ﷺ as it came in the hadith of Umar's vow ﷺ.

Abu Dawud recorded on the authority of 'A'ishah ﷺ, who reported from the Messenger of Allah ﷺ that he was such that whenever it was the last ten days (of Ramadan), he would rise through all his night, wake up his family members and tighten his waistband. The report can be found in the Sahihayn and some other works.

As for the permissibility of standing in prayer in the nights of decree, the proof

for that is the hadith recorded on the authority of Abu Hurairah ﷺ as found in the Sahihayn and some other works from the Prophet ﷺ that he said:

مَنْ قَامَ لَيلَةَ القَدْرِ إِيْمَاناً وَاحْتِسَاباً غُفِرَ لَه مَا تَقَدَّمَ من ذَنْبِه

Whoever stands in prayer in the Night of Decree with faith and hope for rewards (from Allah), his past sins will be forgiven.

There are different Ahadith over what night is specifically the Night of Decree. There are different opinions too; the views are more than forty. I mentioned all the views in Sharh Al-Muntaqaa, the book can be visited.

As for the assertion that a person carrying out I'tikaf cannot go out (of the masjid) except for a need, that is due to what has come authentically from the Messenger of Allah ﷺ in the hadith recorded on the authority of 'A'ishah ﷺ as found in the Sahihayn that he ﷺ was such that whenever he was carrying out the I'tikaf would not enter the house except for a human need.

Abu Dawud recorded on her authority that she ﷺ said: The Prophet ﷺ would pass by a sick person while he was carrying out I'tikaf, and he would not ask about his health condition. There is however Layth bin Abi Sulaym in the chain of the report, Al-Haafidh Ibn Hajr ﷺ said: What has been authentically reported from 'A'ishah ﷺ is that the act is her practice. Muslim and some other writers recorded it. Muslim said: That is established from Ali.

Abu Dawud also recorded on the authority of 'A'ishah ﷺ that she said: 'The Sunnah which a person doing I'tikaf should observe are that: he should not visit the sick, witness a funeral, or touch a woman (in a sexual intercourse), or play with her, he should not go out except for an important need; there is no I'tikaf except that it is accompanied with fast, so also except it takes place in a masjid where Jumu'ah Prayer is observed.

An-Nasai also recorded the hadith but there is no mention of the word 'the Sunnah' in it. Abu Dawud said: None except AbdurRahman bin Ishaq reported the hadith with the inclusion 'The Sunnah'.

Al-Daraqutni said categorically that what is beyond 'A'ishah's statement '...and he should not go out except' is from her not a report from the Messenger.

7 كتاب الحَجّ
Book of Hajj

باب احكام الحج
Chapter 7.1 Rulings on Hajj

It is an immediate obligation on every religiously responsible person who has the ability.

Explanation:

I say: As for the consideration of ability, that is due to the text of Al-Qur'an:

وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلًا

... and Hajj (pilgrimage to Makkah) to the House (Ka'bah) is a duty that mankind owes to Allah, those who can afford the expenses (for one's conveyance, provision, and residence) ... [Ali 'Imran: 97].

As for the assertion that it must not be delayed, that is due to the hadith recorded on the authority of Ibn Abbas ﴿رضي الله عنهما﴾ from the Prophet ﴿ﷺ﴾ that he said:

تَعَجَّلُوا إِلَى الحَجِّ فَإِنَّ أَحَدَكُمْ لَا يَدرِي مَا يَعرِضُ لَه

Hasten to perform Hajj because none of you knows any occurrence that may prevent him.

Ahmad recorded the hadith.

Ahmad and Ibn Majah also recorded on the authority of Ibn Abbas ﷺ from Al-Fadl – or that it was the latter that related from the former; either of them said that the Messenger of Allah ﷺ said:

مَنْ أَرَادَ الحَجَّ فَلْيَتَعَجَّلْ فَإِنَّه قَد يَمْرَضُ المَرِيضُ وَتَضِلُّ الرَّاحِلَةُ وتَعْرِضُ الحاجَةُ

Whoever intends to perform hajj let him hasten in doing so because a person can become sick or the ride get lost or an incident occurs.

There is Ismail bin Khalifah Al-Abasiyy, Abu Israil, in the chain; he is Saduuq (truthful) but weak in memory.

Ahmad, Abu Yala, Said bin Mansuur and Al-Bayhaqi recorded on the authority of Abu Umamah ﷺ, who reported from the Messenger of Allah ﷺ that he said:

مَن لَمْ يَحْبِسْه مَرَضٌ أو حَاجَةٌ ظَاهِرَةٌ أو مَشَقَّةٌ ظَاهِرَةٌ أو سُلْطانٌ جَائِرٌ فَلَم يَحُجَّ فَلْيَمُت إنْ شاءَ يَهُودِيّاً وإنْ شَاءَ نَصْرَانِيًّا

Whoever is not held back by a sickness or an apparent need or an apparent difficulty or an oppressive ruler such that he does not perform the hajj he should die as either a Jew or a Christian.

There is Layth bin Abi Sulaym and Sharik in the chain of the above report; both men have some weakness.

At-Tirmidhi recorded a hadith on the authority of Ali [bin Abi Talib ﷺ from the Messenger of Allah ﷺ that he said:

مَنْ مَلَكَ زَاداً وَرَاحِلةً يُبَلِّغُه إِلَى بَيْتِ اللَّهِ ولم يَحُجَّ فَلا عَلَيهِ أَنْ يَمُوتَ يَهُودِياً أو نَصْرَانياً

Whoever possesses a provision (for hajj travel) and a ride that can carry him to

the Sacred House of Allah but fails to perform hajj, it doesn't matter if he dies as a Jew or a Christian.

This is so because Allah, The Almighty says in His Book:

وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلاً

... and Hajj (pilgrimage to Makkah) to the House (Ka'bah) is a duty that mankind owes to Allah... [Ali 'Imran: 97].

At-Tirmidhi said: 'The hadith above is strange and there is a problem with its chain.

Al-Harith is weak. As for Hilal bin Abdillah, the person that narrated from him via Ibn Ishaq is unknown. Al-Uqayli said: His report cannot be corroborated by another report.

The hadith has been reported via a third route; hadith recorded on the authority of Abu Hurairah ﷺ as found with Ibn Adiyy which is similar to the earlier hadith. Said bin Mansuur recorded in his Sunan on the authority of Al-Hasan ﷺ who said: Umar bin al-Khattab ﷺ said: I have thought of sending some men to these cities and see each person that has the means to come for hajj but does not do so such that Jizyah would then be placed on them; they are not Muslims! They are not Muslims!

Al-Bayhaqi also recorded it.

It is the opinion of Abu Hanifah, Ahmad, some students of Al-Shafi'i and some members of the family of the Prophet ﷺ such as Zaid bin Ali, Al-Muayyad bi-llah and An-Nasir that hajj must be performed without any delay (when one has the means thereof).

Al-Shafi'i, Al-Auzai, Abu Yusuf, Muhammad and Al-Qasim and Abu Talib from the family of the Prophet ﷺ say hajj can be performed with time.

باب وجوب تعْيين نوع الحَجّ بالنِّية

Chapter 7.2 Obligation of Specifying Hajj with Intention



It is obligatory to specify the type of Hajj with intention whether it is Tamatu'u (i.e. starting with Umrah, then a break, then Hajj) or Qiran (i.e. performing Umrah and Hajj simultaneously without break) or Ifrad (i.e. singling out Hajj). The first type is the best. Assumption of Ihram (i.e. putting on Hajj cloths for the commencement of Hajj rites) is from the known miqat (station of assuming Ihram). Whoever has the miqat behind him, their home is where they will assume the Ihram. The people of Makkah will assume their Ihram from Makkah.

Explanation:

I say: As for the obligation of specifying the hajj with intention, the proof for that is what has earlier been mentioned under the section of ablution. It has come authentically in the Sahihayn and other works in the hadith recorded on the authority of 'A'ishah ﵂ who said: We went out with the Messenger of Allah ﷺ and he ﷺ said:

مَنْ أَرَادَ مِنْكُمْ أَنْ يُهِلَّ بِحَجٍّ وعُمْرَةٍ فَلْيَفْعَلْ ومَنْ أَرَادَ أَنْ يُهِلَّ بِحَجٍّ فَلْيُهِلَّ ومَنْ أَرَادَ أَنْ يُهِلَّ بِعُمْرَةٍ فَلْيُهِلَّ

Whoever wants to make intention of Hajj with Umrah let him do so; whoever wants to make intention of Hajj (alone) let him do so; whoever wants to make intention of Umrah (then hajj later) let him do so.

'A'ishah ﵂ said: The Messenger of Allah ﷺ made intention of Hajj, so also did some of the people with him, while some people made intention of Hajj with Umrah, and some people made intention of Umrah. I was one of those who made intention of Umrah.

In Sahih Al-Bukhari in the hadith recorded on the authority of Jabir ﵁ that the Messenger of Allah ﷺ commenced hajj rites from Dhul-Hulayfah that was when his ride stopped.

Also in the Sahihayn, in a hadith recorded on the authority of Ibn Umar ﵄

he said: This (Mount) Baydaa of yours with which you lie against the Messenger of Allah ﷺ (that he commenced his hajj rites there); indeed the Messenger of Allah ﷺ did not commence his hajj rites except from the masjid.' The masjid he was referring to was the masjid at Dhul-Hulayfah.

There is a difference of opinion as regards the place where the Messenger of Allah ﷺ commenced his hajj activities; the difference of opinions is due to what each reporter reported from the Messenger of Allah ﷺ. Some said he ﷺ commenced his hajj activities from the masjid (at Dhul-Hulayfah), there were some who reported that he ﷺ commenced the activities where his ride stopped, some reported that he ﷺ began his hajj when he came on top of (Mount) Baydaa. Ibn Abbas رضي الله عنه merged all the reports together by saying that he ﷺ made the acts of commencement of hajj in all of those places; each of the reporter reported what he heard (or saw).

As for the assertion that At-Tamatuu is the best type of hajj among the three types, know that this matter has seen a very long debate and there have been several opinions conflicting with one another over it. Some of the scholars say that al-Qiran is the best because that was the type of hajj the Messenger of Allah ﷺ performed as it came authentically in a report, even though there is another evidence indicating that he ﷺ actually performed Al-Ifrad type of hajj but there are authentic Ahadith in the Sahihayn and some other works, that came via various routes, stating clearly that the Messenger of Allah ﷺ announced hajj with Umrah (i.e. al-Qiran). If nothing has come from the Messenger of Allah ﷺ indicating that what he did not do (regarding type of hajj) is better than what he did, we would have said that Qiran (that he performed) is the best type of hajj but there is a report indicating that other than Al-Qiran is better.

It has come in the Sahihayn and some other works in the hadith recorded on the authority of Jabir رضي الله عنه that the Prophet ﷺ said:

يَا أَيُّهَا النَّاسُ أَحِلُّوا فَلَوْلَا الهَدْيُ مَعِي فَعَلْتُ كَمَا فَعَلْتُم

O people! Put off your Ihram. If not because of the animal I brought with me, I would do as you do.

Jabir رضي الله عنه said: Then we put off our Ihram such that we could have intercourse with our women; we were doing as someone not on hajj would do. We continued that way until the eight day of Dhul-Hijjah, we moved out of Makkah and made our intentions of hajj.

The like of the above report has come authentically from a number of Companions with different wordings such as the following:

لو اسْتَقْبَلْتُ مِنْ أَمْرِي مَا اسْتَدْبَرْتُ مَا سُقْتُ الهَدْيَ ولَجَعَلْتُها عُمْرَةً

If I had known what I know now (regarding the opportunity to put off the Ihram), I would not have brought animals; I would have made it Umrah.

That is the view of a number of Companions and the people who came after them, as well as who later like Malik, Ahmad, and from the members of the family of the Prophet ﷺ: Al-Baqir, As-Sadiq, An-Nasir, Ismail, Musa Ibn Jafar As-Sadiq, so also the Imaamiyyah Sect. That is the true position because there is no proof that can contradict the proofs for this position. The Messenger of Allah ﷺ indeed made it clear that it is Tamatu'u type of hajj that is the best, even better than the type of hajj that he ﷺ performed which is Al-Qiran.

I have explained the proofs of all the views and what is cited as proofs by each group (of scholars) in Sharh Al-Muntaqaa. So also I explained that the hajj performed by the Messenger of Allah ﷺ is Al-Qiran; you check the book.

As for the assertion that Ihram has to be made from the miqat, the proof for that is the hadith recorded on the authority of Ibn Abbas ﷺ as it has occurred in the Sahihayn that he said: 'The Messenger of Allah ﷺ made Dhul-Hulayfah as the miqat of people of Madinah; for the people of Shaam (the Greater Syria), Al-Juhfah; for the people of Najd, Qarnul-Manaazil is their miqat; for the people of Yemen, Yalamlam is their miqat. He ﷺ then said:

فهُنَّ لَهُنَّ ولِمَنْ أَتَى عَلَيْهِنَّ مِن غَيْرِ أَهْلِهِنَّ لِمَن كان يُرِيدُ الحَجَّ والعُمْرَةَ فمَنْ كَانَ دُونَهُنَّ فَمُهَلُّهُ مِنْ أَهْلِهِ وكَذَلِك حتَّى أَهْلُ مَكَّة يُهِلُّونَ مِنْهَام

Those places are for their inhabitants as well as those who come through them besides their inhabitants for those who intend to perform Hajj and Umrah; as for those who have the miqat behind them, they will begin their own Hajj from their homes so also are the people of Makkah, they will begin their Hajj from there.

The like of the hadith can be found in the Sahihayn in the hadith recorded on the authority of Ibn Umar ﷺ. Also in a version recorded by Ahmad that he ﷺ made people for Dhaatu-Irk at Qarn.

In the narration of Al-Bukhari in the hadith recorded on the authority of Ibn Umar ﷺ also, that Umar ﷺ said to the people of Basra and Kufah: Watch Qarn closely in your route. Ibn Umar ﷺ said: He thus made Dhaatu-Irk as their miqat.

باب محرّمَات الإحْرام

Chapter 7.3 Forbidden Acts under Ihram



A muhrim (i.e. a pilgrim performing hajj who has put on the Ihram) should neither put on a robe nor a turban or a hooded cloak or trousers or any cloth touched with war's (a yellow dye) or saffron; nor should he put on leather socks except if he does not have shoes, then he can put on leather socks but upon the condition that he will cut them such that they are not higher than the ankles. A woman pilgrim should neither put on the Niqab (face-veil) nor should she put on gloves or what is touched with war's or saffron. A Pilgrim should also neither wear perfume at all nor should he take anything from his hair or body except for a (legal) excuse. He should not also make licentious speeches, or transgress, or engage in arguments, or copulate (with his spouse) or join a man and a woman together as husband and wife, or initiate a Nikah process or kill a game. Whoever kills a game must bring the like of what he kills upon the judgment of two just persons. He should not eat from a game another person may catch except if the hunter is not on hajj and does not catch the game specifically for the person performing hajj. He should also not cut from the plants/ trees of the Sacred Precinct except lemon grass. It is (however) permissible for him to kill the Five Stubborn Animals. The game and plants/trees of the Sacred Precinct of Madinah will be treated the way the game and plants/trees of the Sacred Precinct of Makkah are treated except that whoever sees anyone cutting any of its trees or trampling it can despoil him. It is also forbidden to hunt at Wajj or cut its trees.

Explanation:

I say: As for the assertion that a muhrim should not put on those things (that are mentioned), the proof for that is the hadith recorded on the authority of Ibn Umar ﷺ as contained in the Sahihayn and some other works that he ﷺ said: The Messenger of Allah ﷺ was asked as regard what a muhrim should put on, he ﷺ then said:

لَا يَلْبَسُ المُحْرِمُ القَمِيصَ وَلَا العِمَامَةَ وَلَا البُرْنُسَ وَلَا السَّرَاوِيلَ وَلَا ثَوباً مَسَّهُ وَرْسٌ وَلَا زَعْفَرَانٌ وَلَا الخُفَّيْنِ إِلَّا أَنْ لَا يَجِدَ نَعْلَيْنِ فَلْيَقْطَعْهُمَا حَتَّى يَكُونَا أَسْفَلَ مِنَ الكَعْبَيْنِ

A Muhrim should not put on a robe or a turban or a hooded cloak or trousers or any cloth touched with war's or saffron; he should as well not put on leather socks except that if he cannot get shoes then he should cut the leather socks such that they are not above the ankles.

Al-Qadi Iyadh ﴿رحمه الله﴾ said: The Muslim scholars agree on the fact that all what are mentioned in the hadith are not to be worn by a muhrim.

Muslim and some other recorders of hadith recorded a hadith on the authority of Jabir ﴿رضي الله عنه﴾ who said the Messenger of Allah ﴿ﷺ﴾ said:

مَنْ لَمْ يَجِدْ نَعْلَيْنِ فَلْيَلْبَسْ خُفَّيْنِ ومَنْ لَمْ يَجِدْ إِزَاراً فَلْيَلْبَسْ سَرَاوِيلَ

Whoever cannot get a pair of shoes should get a pair of leather socks, and whoever cannot get a loin-cloth should wear trousers.

There is a similar narration to the above hadith in the Sahihayn on the authority of Ibn Abbas ﴿رضي الله عنهما﴾.

Ahmad, Al-Bukhari, An-Nasai and At-Tirmidhi (who authenticated it) recorded a hadith on the authority of Ibn Umar ﴿رضي الله عنهما﴾ that the Prophet ﴿ﷺ﴾ said:

لا تَنْتَقِبُ المَرْأَةُ المُحْرِمَةُ ولا تَلْبَسُ القُفَّازَيْنِ

A woman under Ihram should not put on the Niqab (i.e. the face veil) nor should she put on gloves.

Abu Dawud has an addition:

وَمَا مَسَّ الوَرْسُ والزَّعْفَرَانُ مِنَ الثِّيابِ

Nor whatever is touched by war's or saffron among the cloths.

The gloves that a woman wears cover her two hands, her fingers, and her palms when undergoing something.

As for the assertion that a muhrim should not wear perfume at all but can remain upon the perfume he has applied to his body before he assumed the Ihram that is the superior view that comes forth from the merger between all the evidences. We have explained that in Sharhu Al-Muntaqaa.

As for the assertion that a muhrim cannot take from his hair or body except for a reason, the proof for that is the hadith recorded on the authority of Kab bin Ujzah ﷺ as found in the Sahihayn and some other works; he ﷺ said: 'I had a problem with my head then I was taken to the Messenger of Allah ﷺ while lice were dropping on my face. The Messenger of Allah ﷺ said:

مَا كُنْتُ أَرَى أَنَّ الجَهْدَ قَدْ بَلَغَ مِنْكَ مَا أَرَى أَتَجِدُ شَاةً

I never knew that the problem has gone this length with you as I can see; do you have a sheep?

I (Kab ﷺ) replied in the negative. The Verse: He must pay a Fidyah (ransom) of either observing Saum ((three days) fasting) or giving Sadaqah (charity) or offering sacrifice (one sheep). [Al-Baqarah: 196] was revealed. He ﷺ said: It is three days fasting or feeding six poor persons; half a Sa measure for each poor person.

As for the assertion that a muhrim should not make obscene speech or transgresses or engages in arguments, the proof for that is the text of the Qur'an. The acts mentioned are not permissible when one is not on hajj but when one is on hajj it becomes more severe to engage in them.

As for the assertion that a muhrim should neither copulate nor should he marry a person to another, the hadith in support of that is the one recorded on the authority of Uthman [bin Affan ﷺ] as found in Sahih Muslim and other books that the Messenger of Allah ﷺ said:

لا يَنْكِحُ وَلَا يُنْكَحُ وَلَا يَخْطِبُ

He should not marry or copulate, nor be married or copulated with, or should he seek for a woman in marriage.

There are several other Ahadith under the section.

As for the hadith that occurs in the Sahihayn and some other works on the authority of Ibn Abbas ﷺ that the Prophet ﷺ married Maymuunah ﷺ while he ﷺ was a muhrim. The hadith is in conflict with what has come in Sahih Muslim and some other works on the authority of Maymuunah ﷺ that the Prophet ﷺ married her while he ﷺ was not a muhrim.

Another proof in conflict (with the hadith above) is the hadith which Ahmad and At-Tirmidhi recorded and which was held to be hasan by the latter in the hadith of Abu Rafi ﷺ that the Messenger of Allah ﷺ married Maymuunah ﷺ while he ﷺ was not a muhrim. Abu Rafi ﷺ was the go-between between the Messenger of Allah ﷺ and Maymuunah ﷺ. The duo (Maymuunah and Abu Rafi ﷺ) knew better.

Taken that the statement of Ibn Abbas ﷺ is sound and is applicable to the reality, it is not in conflict with the Ahadith stating clearly the prohibition rather we would say doing so was specific for the Prophet ﷺ.

As for the assertion that a muhrim cannot hunt for a game, the Noble Qur'an has mentioned that. If a muhrim kills a game then he must expiate that with the like of what he might have killed; two just persons will judge over that as Allah The Most Blessed said.

As for the assertion that a muhrim is not to eat from a game that is killed by another person till the end of the statement, the proof for that is the hadith recorded on the authority of As-Sab bin Jathaamah ﷺ that can be found in the Sahihayn and some other works that he (As-Sab) presented a gift of mutton of a hunted onager to the Messenger of Allah ﷺ while he was at Al-Abwaa or Waddaan, but Messenger of Allah ﷺ rejected it. When the Messenger of Allah ﷺ observed he (As-Sab) was unhappy as he could read it in his face, he ﷺ said:

إِنَّا لَمْ نَرُدَّهُ عَلَيْكَ إِلَّا أَنَّا حُرُمٌ

Indeed we did not reject it except for the fact that we on Hajj.

Muslim recorded the like of the hadith on the authority of Zaid bin Arqam ﷺ.

Also there is a hadith in the Sahihayn and some other works on the authority of Abu Qatadah ﷺ that the Prophet ﷺ ate from the hunted game which the he (Abu Qatadah) killed while he was not on Hajj and the Prophet ﷺ was on Hajj; the Messenger of Allah ﷺ ate from the upper-arm of the onager that was killed by Abu Qatadah ﷺ.

The merger between the hadith of As-Sab ﷺ and hadith of Abu Qatadah ﷺ is that the Messenger of Allah ﷺ refused to eat from the game of As-Sab ﷺ because the latter actually hunted it for the Prophet ﷺ but he ﷺ ate from the game of Abu Qatadah because he did not hunt for the animal because of the Messenger of Allah ﷺ. The hadith recorded on the authority of Jabir ﷺ also indicates the merger; the hadith is recorded by Ahmad, the Collectors of Sunan, Ibn Khuzaymah, Ibn Hibban, Al-Daraqutni, Al-Hakim and Al-Bayhaqi that the Prophet ﷺ said:

صَيْدُ البَرِّ لَكُمْ حَلَالٌ وأَنتُم حُرُمٌ مَا لَمْ تَصِيدُوهُ أَو يُصَدْ لَكُمْ

Hunted land animals are permissible for you (to eat) when you are performing hajj so far you do not hunt for them (yourselves) or hunted for you.

As for the assertion that trees of the Sacred Precinct (of Makkah) are not to be cut except the lemon grass, the proof for that is the hadith recorded on the authority of Ibn Abbas ﷺ as found in the Sahihayn and some other works wherein he said: The Messenger of Allah ﷺ said on the day of Conquest of Makkah:

إِنَّ هَذَا البَلَدَ حَرَامٌ لا يُعْضَدُ شَجَرُه ولا يُخْتَلَى خَلَاؤُهُ ولا يُنَفَّرُ صَيْدُه ولا تُلْتَقَطُ لُقْطَتُه إِلَّا لِمُعَرِّفٍ

Verily this land is sacred; its trees are not to be cut nor can its fresh plants be cut nor can its game be hunted nor can found-items be picked except by a person who wants to announce it.

At that, Al-Abbas ﷺ said: [O Messenger of Allah,] exempt the lemon grass because they cannot do without it; it used in blacksmithing and for building houses.

The Messenger of Allah ﷺ then said:

إلا الإِذْخِرَ

Except the lemon grass.

Al-Bukhari and Muslim recorded the like of the hadith on the authority of Abu Hurairah ﷺ.

As for the assertion that it is permissible for the muhrim to kill the Five Stubborn Animals, the proof for that is the hadith recorded on the authority of 'A'ishah ﷺ

As contained in the Sahihayn and some other books that she ﷺ said: The Messenger of Allah ﷺ commanded that the Five Stubborn Animals should be killed whether outside the Sacred Precinct or inside it; they are: Crow, kite, scorpion, [rats] and mad dog.

Also in the Sahihayn in the hadith recorded on the authority of Ibn Umar ﷺ, he (Ibn Umar) said: The Messenger of Allah ﷺ said:

خَمْسٌ مِنَ الدَّوَابِّ لَيسَ فِي قَتْلِهِنَّ جُنَاحٌ

Five animals; there is no blame upon killing them...

In Sahih Muslim in the hadith recorded on the authority of Ibn Umar ﷺ, there is an addition of mention of 'snake' so also it is mentioned in the hadith recorded on the authority of Ibn Abbas ﷺ as found with Ahmad but the chain of that narration contains the presence of Layth Ibn Abi Sulaym (who is a weak narrator).

As for the assertion that game and trees/plants of Madinah are to be treated as game and trees of the Sacred Precinct of Makkah, the proof for that is the hadith recorded on the authority of Ali [Ibn Abi Talib] as found in the Sahihayn and some other books that the Messenger of Allah ﷺ said:

المَدِينَةُ حَرَامٌ مَا بَيْنَ عَيْرٍ إِلَى ثَوْرٍ

Madinah is sacred; what is between Ayr and Thawr.

The hadith can also be found in the Sahihayn in the hadith recorded on the authority of Abaad bin Tamim رضي الله عنه that the Messenger of Allah ﷺ said:

إِنَّ إِبْرَاهِيمَ حَرَّمَ مَكَّةَ وَدَعَا لَهَا وإِنِّي حَرَّمْتُ المَدِينَةَ كَمَا حَرَّمَ إِبْرَاهِيمُ مَكَّةَ

Indeed [Prophet] Ibrahim sanctified Makkah and made supplicate for it, while I sanctified Madinah as Ibrahim sanctified Makkah.

There are several other Ahadith under the section as found in the Sahihayn on the authority of a number of Companions.

As for the assertion that whoever cuts any tree in Madinah or tramples on it will be despoiled, the proof for that is the hadith recorded on the authority of Sa'd ibn Abi Waqqas رضي الله عنه that he rode to his palace at Al-Aqeeq then found a slave boy cutting or trampling on trees there, then he (Sad) despoiled him. When Sad returned, the family of the slave came to him and talked to him (over the issue), that he should return what he had despoiled from the boy to him or to them. Sad رضي الله عنه however said: May Allah forbid that I should return what the Messenger of Allah ﷺ has said it is a booty for me. Thus Sad رضي الله عنه refused to return it to them. Muslim and Ahmad recorded the report.

In the version of Ahmad, Abu Dawud and Al-Hakim (who authenticated it), it goes that the Messenger of Allah ﷺ said:

مَنْ رَأَيْتُمُوهُ يَصِيدُ فِيهِ شَيْئًا فَلَكُمْ سَلَبُهُ

Whomever you see hunting anything therein (i.e. Madinah) then it is lawful for you to despoil such a person.

As for the prohibition of hunting in Wajj and the prohibition of cutting its trees, the proof for that is the hadith recorded on the authority of Az-Zubayr ﷺ that the Prophet ﷺ said:

إِنَّ صَيدَ وَجٍّ وعِضَاهَهُ حَرَامٌ مُحَرَّمٌ لِلَّهِ عَزَّ وجَلَّ

Indeed hunting in Wajj and cutting its trees are sacred; there are held sacred to Allah The Almighty and Most Sublime.

Ahmad and Abu Dawud recorded it; so also Al-Bukhari in his Tarikh. Al-Mundhiri ﷺ held it to be hasan while Al-Shafi'i ﷺ held it to be authentic.

Wajj is a valley in Taif.

Al-Shafi'i and Al-Imam Yahya are of the view of the purport of the hadith and that is the truth. Those who criticized the hadith have not come with a convincing explanation that can justify their criticism, and which can necessitate invalidity of what the hadith contains of liability.

باب ما يجِبُ عمله أثناء الطَّوَاف

Chapter 7.4 Obligations during Tawaf

Circumambulation



When a pilgrim arrives at Makkah, he will first perform the Tawaf of Arrival, seven rounds; he will hasten in the first three rounds but walk in the remaining four. Then he will kiss the Black Stone or touch it with a crosier (a rod) and kisses it; he can use any similar object to touch it. He will also touch the Yemeni Corner. It suffices the person doing Hajj Al-Qiran to perform just one Tawaf and one Sa'y (i.e. pacing between Mount Safa and Mount Mar'wa). He should with ablution while performing the Tawaf and should cover his nakedness. A woman in her menstrual period should carry out what the rest of the people on hajj do except the Tawaf around the House. It is recommended to engage in legal words of remembrance while one is performing the Tawaf. After the Tawaf, the pilgrim should perform two units of prayers at Maqam Ibrahim (i.e. the Station of Ibrahim), then go back to the Corner and touch it.

Explanation:

I say: Hastening was initially made legal in the Tawaf in order to infuriate the polytheists (then in Makkah) as it has come in the hadith recorded on the authority of Ibn Abbas ﴿ﷺ﴾ who said: The Messenger of Allah ﴿ﷺ﴾ arrived (in Makkah) with his Companions then the polytheists (of Makkah) said: '[O people of Makkah,] a people have arrived in your place; a people that have been weakened by the fever of Yathrib (i.e. Madinah).' [Upon that,] the Messenger of Allah ﴿ﷺ﴾ commanded (the Muslims) to pace fast (and expose their right shoulders) in the first three rounds of Tawaf and that they should walk between the two Corners. Nothing prevented him ﴿ﷺ﴾ from commanding them to hasten in all the rounds of Tawaf except that he ﴿ﷺ﴾ wanted to retain the act of walking.

The report is jointly recorded by Al-Bukhari and Muslim.

Also in the Sahihayn in the hadith recorded on the on the authority of Ibn Umar ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ was such that anytime he made the Tawaf round the House, he would trot in the first three rounds and walk in the last four.' In a version, the Messenger of Allah ﴿ﷺ﴾ would hasten between the Black Stone and the Yemeni Corner three times and walk four times.

Ahmad, Abu Dawud and Ibn Majah recorded that Umar (ﷺ) said: That we hasten and display the shoulders now, even though Allah has assisted Islam and obliterated unbelief and its people, we shall not forsake something which we used to do in the time of the Messenger of Allah (ﷺ).

The majority of the scholars are of the view that it is obligatory to perform the Arrival Tawaf. Abu Hanifah (ﷺ) said it is only Sunnah (the practice of the Messenger of Allah (ﷺ)) to perfume the Arrival Tawaf. It was reported from Al-Shafi'i (ﷺ) that he said its ruling is like that of prayer of greeting the masjid (when one enters any masjid). The truth however is the first opinion due to Allah's Statement:

وَلْيَطَّوَّفُوا بِالْبَيْتِ الْعَتِيقِ

...and (they should) circumambulate the Ancient House. [Hajj: 29]

As for the act of kissing the Black Stone, it has came in the Sahihayn in the hadith recorded on the authority of Umar (ﷺ) that he kissed the Black Stone and said: Indeed I know that you are a stone which cannot bring any harm or benefit; if not that I saw the Messenger of Allah (ﷺ) kiss you I would not have kissed you.

Ahmad, Ibn Majah and At-Tirmidhi recorded a hadith on the authority of Ibn Abbas (ﷺ) that the Messenger of Allah (ﷺ) said:

يَأْتِي هَذَا الحَجَرُ يَومَ القِيَامةِ لَه عَيْنَانِ يُبْصِرُ بِهِما وَلِسَانٌ يَنْطِقُ بِهِ يَشْهَدُ لِمَن يَسْتَلِمُهُ بِحَقٍّ

This [Black] Stone will come on the Day of Resurrection having two eyes with which it will see and a tongue with which it will talk and it will testify on behalf of anyone who kissed or touched it in truth.

There are several other Ahadith under the section.

And in the Sahihayn and some other books, a hadith recorded on the authority of Ibn Abbas (ﷺ) who said: The Messenger of Allah (ﷺ) performed Tawaf in his Farewell Hajj while riding on a camel and he touched the Corner with a crosier.

Muslim recorded the like of the hadith above on the authority of Abu Tufayl ﴿ﷺ﴾ and he added and he kissed the crosier.

Ahmad also recorded on the authority of Umar ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ said to him:

يا عُمَرُ إِنَّكَ رَجُلٌ قَوِيٌّ لا تُزَاحِمْ عَلَى الحَجَرِ فَتُؤْذِيَ الضَعِيفَ إِنْ وَجَدْتَ خَلْوَةً فَاسْتَلِمْهُ وإِلَّا فَاسْتَقْبِلْهُ وَهَلِّلْ وَكَبِّرْ

O Umar, you are a strong man, so do not jostle at the Stone lest you hurt the weak. If you can get a space then touch it, but if you cannot then face it and say La-Ilaha-illa Allah and Allahu-akbar ['There is none worthy of worship except Allah' and 'Allah is Great'].

There is an unknown narrator in the chain of narration.

Ahmad and An-Nasai recorded on the on the authority of Ibn Umar ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ said:

إِنَّ مَسْحَ الرُّكْنِ اليَمَانِيِّ والرُّكْنِ الأَسْوَدِ يَحُطَّ الخَطَايَا حَطًّا

Verily touching the Yemeni Corner and the Black (Stone) Corner wipes away the sins off.

There is Atta bin As-Saib in the chain of the above hadith.

Also in the Sahihayn and some other books, in the hadith recorded on the authority of Ibn Umar ﴿ﷺ﴾ who said: I never saw the Messenger of Allah ﴿ﷺ﴾ touch the Corners except the two Yemeni Corners.

Al-Bukhari recorded in his Tarikh and Abu Yala, a hadith on the authority of Ibn Abbas ﴿ﷺ﴾ that the Messenger of Allah ﴿ﷺ﴾ used to kiss the Yemeni Corner. There is Abdullah bin Muslim bin Hurmuz; he is weak.

Ahmad and Abu Dawud also recorded a hadith on the authority of Ibn Abbas ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ used to kiss the Yemeni Corner and would place his cheek over it.

As for the assertion that the pilgrim performing Hajj Al-Qiran will only perform one Tawaf and one Sa'ee, the proof for that is because the Messenger

of Allah ﷺ performed Hajj Al-Qiran – in the most correct view – and he was satisfied with one Tawaf on his arrival (in Makkah) and one Sa'ee. There is no proof for two Tawaf and two Sa'ee.

At-Tirmidhi recorded a hadith on the on the authority of Ibn Umar رضي الله عنهما from the Messenger of Allah ﷺ that he said:

مَنْ أَحْرَمَ بِالحَجِّ والعُمْرَةِ أَجْزَأَهُ طَوَافٌ وَاحِدٌ وَسَعْيٌ وَاحِدٌ

Whoever performs a hajj with Umrah (i.e. Hajj Qiran) a Tawaf and a Sa'ee will suffice for him.

At-Tirmidhi held it to be hasan.

As for the view that the person performing the Tawaf should be with ablution and covers his nakedness, the proof for that is the hadith recorded in the Sahihayn on the authority of 'A'ishah رضي الله عنها that the first thing the Prophet ﷺ began with when he arrived (in Makkah) was to perform ablution, he then performed the Tawaf round the House.

Also in the Sahihayn, on the authority of Abu Bakr رضي الله عنه that the Prophet ﷺ said:

لَا يَطُوفُ بِالبَيْتِ عُرْيَانٌ

No one should circumambulate the House naked.

As for the assertion that a woman in her menstrual period will do out all what other pilgrims do except that she will not circumambulate the House, the proof for that is the hadith recorded on the on the authority of 'A'ishah رضي الله عنها from the Prophet ﷺ that he said:

الحَائِضُ تَقْضِي المَنَاسِكَ كُلَّهَا إِلَّا الطَّوَافَ

A woman in her menstrual period will carry out all the hajj rites except the Tawaf.

Ahmad recorded the hadith above.

Ibn Abi Shaybah recorded the like of the hadith with sound chain from the statement of Ibn Umar ﷺ.

Another proof is the hadith recorded on the on the authority of 'A'ishah ﷺ as found in the Sahihayn and some other books that the Prophet ﷺ told her when she began to see her period (at Hajj):

افْعَلِي مَا يَفْعَلُ الحَاجُّ غَيْرَ أَنْ لَا تَطُوفِي بِالبَيْتِ حَتَّى تَغْتَسِلِي

Do all what a pilgrim does except that you should not circumambulate the House until you perform a bath (after your period to cleanse you).

As for the assertion that it is recommended to say legal words of remembrance when performing the Tawaf, the proof for that is the hadith recorded on the on the authority of Abdullah bin As-Saib ﷺ who said: I heard the Messenger of Allah ﷺ say between the Yemeni Corner and the Stone: rabbanaa aatinaa fee dunya hasana wa fil-aakhirah hasanah wa qinaa adhaaban-naar [O our Lord, grant us goodness in this world and goodness in the Hereafter and save us from the punishment of fire]. Ahmad, Abu Dawud, An-Nasai (who authenticated it) and Ibn Hibban recorded on the authority of Abu Hurairah ﷺ from the Messenger of Allah ﷺ who said:

وُكِلَ بِه يَعْنِي الرُّكْنَ اليَمَانِيَّ سَبْعُونَ مَلَكاً فَمَنْ قالَ : اللَّهُمَّ إِنِّي أَسْأَلُكَ العَفْوَ والعَافِيَةَ فِي الدُّنْيا والآخِرَةِ رَبَّنا آتِنَا فِي الدُّنْيَا حَسَنَةً وفِي الآخِرَةِ حَسَنَةً وقِنَا عَذَابَ النَّارِ قَالُوا آمِين

Seventy angels have been stationed with it – the Yemeni Corner; whoever says: 'Allahumma inni as'aluka al-afwwa wal-aafiyyah fee dunyaa wa fil-aakhirah; rabbanaa aatinaa fee dunyaa hasanah wa fil-aakhirah hasanah wa qinaa adhaaban-naar [O Allah, I beseech You for pardon and safety in this world and the Hereafter; O our Lord, grant us goodness in this world and goodness in the Hereafter and save us from the punishment of fire].' They (i.e. the angels) will reply: Aamin.

Ibn Majah recorded the hadith with a chain that has the presence of Ismail bin Ayash and Hisham bin Ammar; both of them are weak.

Ibn Majah also recorded in the hadith of Abu Hurairah ﷺ that he heard the Messenger of Allah ﷺ say:

مَنْ طَافَ بالبَيْتِ سَبْعاً ولا يَتَكَلَّمُ إلا بِسُبْحَانَ اللَّهِ والحَمْدُ للَّهِ ولا إلهَ إلَّا اللَّهُ واللَّهُ أكبَرُ ولا حَوْلَ ولا قُوَّةَ إلا باللَّهِ مُحِيَتْ عَنْه عَشْرُ سَيِّئاتٍ وَكُتِبَ لَه عَشْرُ حَسَنَاتٍ ورُفِعَ لَه بِهَا عَشرَةُ دَرَجَاتٍ

Whoever makes seven Tawaf and does not say anything except: Sub'hanallah wal-hamdulillah wa la Ilaha illa Allah wa-llaahu Akbar wa la haula wa la quwwah illa bi-llah [Glorified are You O Allah, praise be to Allah, there is none worthy of worship except Allah, Allah is Great, no power or strength except with Allah], seven sins will be erased from him and ten good deeds will be recorded for him and he will be raised in seven degrees.

The hadith above has the (weak) narrator that was mentioned in the first hadith.

Ahmad, Abu Dawud and At-Tirmidhi (and he authenticated it) recorded a hadith on the authority of 'A'ishah ﷺ who said: The Messenger of Allah ﷺ said:

إنَّما جُعِلَ الطَّوافُ بالبَيْتِ وبِالصَّفَا والمَرْوَةِ لإِقَامَةِ ذِكْرِ اللَّهِ تَعَالَى

Indeed the Tawaf round the House and (the Sa'ee) between Safa and Marwa have been put in place to establish the remembrance of Allah The Most High.

There are several other Ahadith under the section.

As for the assertion that when the pilgrim finishes his Tawaf he will observe two units of prayer by the Station of Ibrahim, the proof for that is the hadith recorded by Muslim and some others on the authority of Jabir ﷺ that the Prophet ﷺ would, anytime he finished his Tawaf, go to the Station of Ibrahim and recite: '...and take you (people) the Maqam (place) of Ibrahim (Abraham) [or the stone on which Ibrahim (Abraham) stood while he was building the Ka'bah] as a place of prayer... [Al-Baqarah: 125]. He ﷺ would then observe two units of prayer wherein he ﷺ would recite the Opening Chapter (i.e.

Surah Al-Fatihah) and Chapter 109 (i.e. Surah Kafirun) in the first unit, and the Opening Chapter and Chapter 112 (i.e. Surah Ikhlas) then he ﷺ would go back to the Corner and touch it.

باب وجوب السَّعْي بين الصَّفَا والمرْوَة

Chapter 7.5 Obligation of Sa'ee (Pacing) between Safa and Marwa



[The pilgrim] will pace between Saffa and Marwa seven times making therein supplications that have come in the Sunnah. A pilgrim carrying out Hajj Tamatu'u will become free from the liabilities of Hajj rites after performing the Sa'ee, until the Day of Tarwiyyah (i.e. the eighth day of Dhul-Hijjah) when he will make the intention of Hajj.

Explanation:

I say: Ahmad and Al-Shafi'i ﴿رحمه الله﴾ recorded on the authority of Habibah bint Abi Tajraah ﴿رضي الله عنها﴾ that the Prophet ﴿ﷺ﴾ said:

اسْعَوا فإِنَّ اللَّهَ كَتَبَ عَلَيْكُمُ السَّعْيَ

Make the Sa'ee; indeed Allah has made Sa'ee obligatory upon you.

There is Abdullah bin Al-Muammal in the chain of the above report; he is weak. The hadith has another route in Sahih of Ibn Khuzaymah and (in the work of) At-Tabarani on the authority of Ibn Abbas ﴿رضي الله عنهما﴾.

Ahmad also recorded the like of the hadith on the authority of Safiyyah bint Shaybah ﴿رضي الله عنها﴾. Muslim and some other writers also recorded a hadith on the authority of Abu Hurairah ﴿رضي الله عنه﴾ that the Prophet ﴿ﷺ﴾ went to As-Safa and climbed it after he finished his Tawaf; he looked at the House, raised his hands and began to praise Allah and make supplications as he ﴿ﷺ﴾ wanted.

An-Nasai recorded the like of the hadith on the authority of Jabir ﴿رضي الله عنه﴾. So also Al-Imam Muslim in his Sahih on the authority of Jabir ﴿رضي الله عنه﴾ that the Prophet ﴿ﷺ﴾ recited this Verse when he ﴿ﷺ﴾ came closer to Safa:

إِنَّ الصَّفَا وَالْمَرْوَةَ مِنْ شَعَائِرِ اللَّهِ

Verily! As-Safa and Al-Mar'wa are of the Symbols of Allah. [Al-Baqarah: 158].

He ﷺ then said:

أَبْدَأُ بِمَا بَدَأَ اللَّهُ بِهِ

I will start with what Allah started with

He ﷺ then started from Safa; he mounted it such that he could see the House, then he faced the Qiblah and testified to the Oneness of Allah and glorified Him and said:

لا إِلَه إِلَّا اللَّهُ وَحْدَهُ لا شَرِيكَ لَهُ لَهُ المُلْكُ ولَهُ الحَمْدُ وَهُوَ عَلَى كُلِّ شَيءٍ قَدِيرٌ ، لا إِلَه إِلَّا اللَّهُ وحْدَهُ أَنْجَزَ وَعْدَهُ ونَصَرَ عَبْدَهُ وهَزَمَ الأَحْزَابَ وَحْدَهُ

La Ilaha illa Allah wahda-hu la sharika lahu, lahul-mulk wa lahul-hamd wahuwa 'ala kulli shayin qadeer. La Ilaha illa Allah wahdahu anjazah wa'dahu wa nasara abd'au wa azamal-ahzaab wahda-hu. [There is none worthy of worship except Allah, He has no partner, His is the Dominion and Praise, He has power over all things. There is none worthy of worship except Allah, He is Alone, He fulfilled His promise, helped His slave, and destroyed the confederates]

Then the Messenger of Allah ﷺ made [other] supplications between that prayers. He did the prayers three times, he then came down (from the mountain) and moved to the Marwa until he reached it and placed his feet well on the valley. He did the same activities he did at Safa on the Marwa valley.

The majority of the scholars are of the view that Sa'ee is obligatory. The Hanafis say it is an obligatory act that whoever denied can be killed for.

As for the assertion that a person performing Hajj Tamatu'u will become free

from liabilities' (of Hajj) after the Sa'ee, the proof for that is the statement of 'A'ishah ﷺ while she was reporting the Hajj they performed with the Prophet ﷺ: 'As for whoever made the intention for Umrah, he will become free after the Tawaf around the House and Sa'ee between Safa and Marwa. The report can be found in the Sahihayn and some other works.

There is also in the Sahihayn on the authority of Jabir ﷺ that the Prophet ﷺ said

أَحِلُّوا مِنْ إِحْرَامِكُمْ بِطَوافِ البَيْتِ وبَينَ الصَّفَا والمَرْوَةِ وقَصِّرُوا ثُمَّ أَقِيمُوا حَلَالاً حَتَّى إِذَا كَانَ يَومُ التَّرْوِيَةِ فَأَهِلُّوا بالحَجِّ واجْعَلُوا الَّتِي قَدِمْتُم بِهَا

Get freed from your Ihram after you might have circumambulated the House and performed the Sa'ee between Safa and Marwa. Cut low your hair and remain freed from liabilities (of Hajj) until the Day of Tar'wiyyah, (on the day) make the intention of Hajj and make the rites you have earlier performed Tamatuu.

In the version of Muslim, also on the authority of Jabir ﷺ, he said: The Messenger of Allah ﷺ commanded us, after we had become free, to assume the Ihram again when we began to move to Mina; thus we made the intention (for Hajj) from Al-Abtah.

باب مَنَاسِك الحَجّ

Chapter 7.6 Rites of Hajj



Then he [the pilgrim] will go to Arafah in the morning of on the Day of Arafah saying the Talbiyyah (i.e. labbayka Allahumma labbayka labaayka la sharika laka labbayka innal-hamda wa ni'mata laka wal-mulk laa sharika lak ['Here I am answering Your call O Allah, here I am answering Your call, here I am answering Your call. There is no partner unto You. Here I am answering Your call. Verily all praises and bounties are Yours, and Yours is the authority. There is no partner unto You.']) and the Takbir (i.e. Allahu akbar [Allah is Great!]). He will merge Zhuhr and Asr Prayers there, he (the Imam) will give sermon then will pour forth (with the Muslims) from Arafah and will go to Muzdalifah where he will merge his Maghrib and Ishaa Prayers; he will pass the night there then will observe Fajr Prayer. After that he will go to the Precinct of Muzdalifah where he will engage in the acts of remembrance of Allah and stay there till close to sunrise. Then he will leave until he will arrive at the middle of Muhassir from where he will take the middle road to Al-Jamrah (where pebbles are thrown) that is beside the tree. That Al-Jamrah is called Al-Jamrah Al-Aqabah (the Farthest Jamrah), he will stone it seven times, each time a pebble, saying Takbir with each throw; he will not throw the pebbles until after the sunrise except women and children who are permitted to do that before the sunrise. Then he will shave his head or cut his hair low. With that it will permissible for him to engage in ordinary acts except that he cannot copulate with his wife. Whoever shaves his hair, slaughters, or leaves Arafah for the House before he throws the pebbles has nothing against him. Then the pilgrim will go back to Mina (from the House in Makkah) where he will pass the Nights of Tashreeq (the three days after the Day of Slaughter) and will, in each day (of the Days of Tashreeq), engage in the acts of throwing pebbles at the three Jamrah, seven times with seven pebbles, each time starting from the closest Jamrah then the middle then the farthest. It is recommended for whoever leads the people in hajj to give them a sermon on the Day of Slaughter as well, so also in the middle of the Days of Tashreeq. The pilgrim will perform the Tawaf Ifadah that is known as Tawaf Ziyarah on the Day of Slaughter (before the returning to Mina mentioned shortly). When he finishes from the Hajj rites, he will perform the Tawaf Widaa (i.e. Tawaf of Departure.)

Explanation:

I say: Ahmad, the Collectors of Sunan, Ibn Hibban, Al-Hakim and Al-Daraqutni recorded a hadith on the authority of AbdurRahman bin Yamar ﷺ that the Prophet ﷺ commanded the announcer to announce: Hajj is Arafah!

Ahmad and Abu Dawud also recorded on the authority of Ibn Umar ﷺ who said: The Messenger of Allah ﷺ set out from Mina after he observed the Fajr Prayer in the morning of the Day of Arafah until he reached the Arafah where he descended at Namirah – the place where Imams used to descend – until it was the time for Zhuhr Prayer, the Messenger of Allah ﷺ set out by the mid-day and he combined Zhuhr and Asr Prayers then gave a sermon to the people, after which he moved to stay by the station close to the Arafah.

In Sahih Muslim, it came on the authority of Jabir ﷺ who said: When it was the eighth day of Dhul-Hijjah, they faced the direction of Mina and made their intention for Hajj, the Messenger of Allah ﷺ was on his ride. He observed Zhuhr and Asr Prayers, Maghrib and Ishaa Prayers, then Fajr Prayer after which he stayed for a while until sunrise; he had commanded that a tent of a hairy material be made for him at Namirah from where he ﷺ moved on. The Quraysh were not in doubt as to his standing by the Sacred Precinct just as they used to do in the Period of Ignorance. The Messenger of Allah ﷺ then moved until he got to Arafah where he ﷺ found the tent had been prepared for him at Namirah, he then descended until the sun passed the zenith. He ﷺ commanded that his animal, Al-Qaswaa, should be brought, he rode on it until he reached the middle of the valley, he then gave sermon to the people. He said:

إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ حَرَامٌ عَلَيْكُمْ كَحُرْمَةِ يَوْمِكُمْ هَذَا فِي شَهْرِكُمْ هَذَا فِي بَلَدِكُمْ هَذَا

Indeed your blood is as scared as this day of yours is sacred in this (sacred) month of yours and in this (sacred) city of yours...

Also in Sahih Muslim, in the hadith recorded on the authority of Usamah bin Zaid ﷺ that the Messenger of Allah ﷺ at the night of the Day of Arafah, so also in the morning said to the people when they were leaving:

عَلَيْكُمْ بِالسَّكِينَةِ

It is upon you that move with tranquillity.

The Messenger of Allah ﷺ said that while he was holding his camel until he entered Muhassir.

Also in the hadith recorded on the authority of Jabir ﷺ as found with Muslim and some other writers, the Prophet ﷺ arrived at Muzdalifah, observed Maghrib.

And Ishaa Prayers there with just one Adhan but two Iqamah, he ﷺ did not perform any optional prayers between them, then he reclined until it was dawn after which he observed the Fajr Prayer when it was clear to him that it was morning; he observed the Fajr Prayer with one Adhan and an Iqamah, then he climbed Al-Qaswa until he reached the Sacred Precinct where he faced the Qiblah and began to make supplications to Allah, extolling Him, saying Laa ilaaha illa Allah and saying He is One. He never ceased standing until everywhere had brightened up, then he left before the sun rose until he got to the middle of Muhassir, he turned a bit and then took the middle road that leads to Al-Jamrah Al-Kubrah (the Bigger Jamrah) until he was able to reach the Jamrah that was beside the tree, he threw seven pebbles at it saying Allahu-akbar with each pebble – the pebbles were like catapult stones. He threw the pebbles from the middle of the valley then he ﷺ moved to Manhar (the place where animals are slaughtered).

Also it has come in the Sahihayn and some other books on the authority of Jabir ﷺ who said: The Messenger of Allah ﷺ threw pebbles at the Jamrah on the Day of Slaughter at forenoon and after the sun had left its zenith.

Also in the Sahihayn, it has come that Ibn Mas'ud ﷺ went to Al-Jamrah Al-kubrah, made the House to be on his left hand side while Mina was on his right hand side, then threw seven pebbles and said: This was how the person whom Surah Baqarah was revealed upon threw his pebbles (at Jamrah). (He was referring to the Messenger of Allah ﷺ.

In a version, [Ibn Mas'ud ﷺ] went on until he reached Al-Jamrah Al-Aqabah.

In the Sahihayn and some other books, on the authority of Ibn Abbas ﷺ who said: I was one of those who arrived before the Messenger of Allah ﷺ in the night of Muzdalifah amidst his weak family members.

Also in the Sahihayn and some other books, on the authority of 'A'ishah ﷺ that she said: Saudah was a fat woman and slow in working, she thus sought permission from the Messenger of Allah ﷺ to set forth ahead of the people (to the Jamrah) in the night, and he ﷺ permitted her

There are several other Ahadith under the section

In Sahih Muslim and some other books, on the authority of Anas bin Malik ﷺ that the Prophet ﷺ arrived in Mina, then went to Al-Jamrah and threw pebbles at it after which he went to his resting place at Mina and slaughtered his animal then he said to the barber: Start cutting! Pointing to the right hand

side of his head, then the left side and he ﷺ began to share to the people (his hair).

Also in the Sahihayn and some other books, the Messenger of Allah ﷺ said:

اللهمَّ اغْفِرْ لِلْمُحَلِّقِينَ

O Allah! Forgive those who shave their hair.

The people said: O Messenger of Allah, what of those who cut their own low?

The Messenger of Allah ﷺ still said:

اللهمَّ اغْفِرْ لِلْمُحَلِّقِينَ

O Allah! Forgive those who shave their hair.

The people said: O Messenger of Allah, what of those who cut their own low?

The Messenger of Allah ﷺ still said:

اللهمَّ اغْفِرْ لِلْمُحَلِّقِينَ

O Allah! Forgive those who shave their hair.

The people said: O Messenger of Allah, what of those who cut their own low?

He ﷺ then said:

وَلِلْمُقَصِّرِينَ

And [forgive as well] those who cut their own low.

Ahmad, Abu Dawud, An-Nasai and Ibn Majah recorded on the authority of Ibn Abbas ﷺ that the Messenger of Allah ﷺ said:

إِذَا رَمَيْتُمُ الجَمرَةَ فَقَد حَلَّ لَكُمْ كُلُّ شَيءٍ إِلَّا النِّسَاءَ

When you have thrown pebbles at the Jamrah, it is then permissible for you to do all things except (copulating with your) women.

Also in the Sahihayn and some other books on the authority of Ibn Umar ﷺ who said: I heard the Messenger of Allah ﷺ saying when a man came to him on the Day of Slaughter while he ﷺ was standing by the Jamrah and said to him: O Messenger of Allah, I shaved my head before I threw pebbles (what should I do?). The Messenger of Allah ﷺ said:

ارْمِ وَلا حَرَجَ

Go and throw pebbles there is nothing (upon you).

Another man also came to him ﷺ and said: I slaughtered (my animal) before I threw pebbles (what should I do?) the Messenger of Allah ﷺ said:

ارْمِ وَلا حَرَجَ

Go and throw pebbles there is nothing (upon you).

Another man came to the Messenger of Allah ﷺ and said: I had proceeded to the House before I threw pebbles. The Messenger of Allah ﷺ replied:

ارْمِ وَلا حَرَجَ

Go and throw pebbles there is nothing (upon you).

In another version contained in the Sahihayn also, it has thus: There was nothing the Messenger of Allah ﷺ was asked that day except that he would reply: Go on, there is nothing (upon you).

Ahmad recorded on the authority of Ali bin Abi Talib رضي الله عنه who said: A man came and said: O Messenger of Allah, I shaved my hair before I slaughtered animal. The Messenger of Allah ﷺ replied:

انْحَرْ وَلا حَرَجَ

Slaughter your animal, no problem.

Then another man came to him ﷺ and said: I had proceeded to (the House) before I shaved my hair. The Messenger of Allah ﷺ replied:

احْلِقْ أَو قَصِّرْ وَلا حَرَجَ

Shave your hair or cut it low, no problem.

In the version of At-Tirmidhi, which he authenticated, it goes thus: [The man said:] I had proceeded before I shaved my hair.

In the Sahihayn and some other books on the authority of Ibn Abbas رضي الله عنهما the Prophet ﷺ was asked as regards slaughtering animals, shaving the hair, and throwing of pebbles; doing anyone before the other, he ﷺ– replied: No problem.

Ahmad, Abu Dawud, Ibn Hibban and Al-Hakim recorded a hadith on the authority of 'A'ishah رضي الله عنها who said: 'The Messenger of Allah ﷺ left later in the day after observing the Zhuhr Prayer moved forth to Makkah, and later to Mina (from Makkah), where he stayed during the Nights of Tashreeq throwing

pebbles at the Jamrahs any time the sun left its zenith and would say Allahu akbar with each throw. He would stand by the First Jamrah, then by the Second but much longer, making supplications, then he would throw pebbles at the Third Jamrah but would not stay.

On the authority of Ibn Abbas ﷺ who said: The Messenger of Allah ﷺ threw pebbles at the Jamrah when the sun left the zenith. Ahmad, Ibn Majah and At-Tirmidhi – who authenticated it – recorded the hadith.

In Sahih Al-Bukhari, on the authority of Ibn Umar ﷺ he said: We would wait observing, and when the sun left its zenith we would throw the pebbles.

At-Tirmidhi recorded a hadith on the authority of Ibn Umar ﷺ which he (At-Tirmidhi authenticated) that the Prophet ﷺ would throw pebbles (at the Jamrah) going there and coming back on foot.

In a version, that Ibn Umar ﷺ used to throw pebbles on the Day of Slaughter riding but on the rest of the days (of Tashreeq) he would walk. And he ﷺ told them that the Messenger of Allah ﷺ used to do that too. Ahmad and Abu Dawud recorded it.

Also in the Sahihayn on the authority of Ibn Abbas and Ibn Umar ﷺ that Al-Abbas ﷺ sought permission from the Messenger of Allah ﷺ to pass the nights of Mina in Makkah because of his act of giving water to the people; the Messenger of Allah ﷺ granted his request.

In Sahih Al-Bukhari and [Musnad] Ahmad it is recorded that Ibn Umar ﷺ used to throw seven pebbles at the Closest Jamrah saying Allahu Akbar with each pebble, then he would step forward a bit saying Lailaha illa Allah, he would stand long facing the Qiblah, making supplications, he would raise his hands. He then would throw pebbles at the Middle Jamrah and take the left route, he would say Lailaha illa Allah and stand facing the Qiblah making supplications while raising his hands as he did before; he would stand longer here. Then he would throw pebbles at the Farthest Jamrah from the middle of the valley but would not stay (to make supplications or any other thing). After that he would turn to leave, he said later: 'That was how I saw the Messenger of Allah ﷺ do.

Ahmad and the Collectors of Sunan recorded a hadith (that was held to be authentic by At-Tirmidhi) on the authority of Aasim bin Adiyy ﷺ that the Messenger of Allah ﷺ gave permission to the shepherd of camels not to sleep in Mina; they were allowed to throw pebbles on the Day of Slaughter then combined the throwing for the next two days on a day, and do the throwing for the day of departure from Mina.

Ahmad and An-Nasai recorded on the authority of Sad bin Malik ﷺ who said: 'When we came back from the hajj we did with the Messenger of Allah ﷺ, some said: 'we threw seven pebbles (at the Jamrah) while some other

said: We threw six pebbles but none criticized the other. The men of the report are sound.

As for the desirability of Khutbah (i.e. sermon) on the Day of Slaughter to be carried out by the person that leads the people on hajj, the proof for that is the hadith recorded on the authority of Al-Hirmaas bin Ziyad who said: I saw the Prophet ﷺ giving sermon to the people while sitting on his she-camel 'Al-Adbaa' on the day of Eid. Ahmad and Abu Dawud recorded the hadith.

Abu Dawud equally recorded the like of the hadith on the authority of Abu Umamah ﷺ. He (i.e. Abu Dawud) and An-Nasai also recorded another like of it on the authority of AbdurRahman bin Muadh At-Taymi ﷺ. Al-Bukhari and Ahmad also recorded on the authority of Abu Bakrah ﷺ; there is in the report that he ﷺ said:

فإِنَّ دِمَائَكُمْ وأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ كحُرْمةِ يَومِكُمْ هَذَا فِي شَهْرِكُمْ هَذَا فِي بَلَدِكُمْ هَذَا إِلى يَومِ تَلْقَونَ ربَّكُمْ أَلَا هَلْ بَلَّغْتُ

Indeed your blood and wealth are sacred to one another as this day of yours is scared to you, in this (sacred) city of yours, and in this (sacred) month, till you will your Lord. Nay, have I delivered?

They (the Companions) replied in the affirmative.

Then he ﷺ said:

اللَّهُمَّ اشْهَدْ فليُبَلِّغِ الشَاهِدُ الغَائِبَ فرُبَّ مُبَلَّغٍ أَوْعَى مِنْ سَامِعٍ فَلا تَرْجِعُوا بَعْدِي كُفَّاراً يَضْرِبُ بَعْضُكم رِقَابَ بَعْضٍ

O Allah be my Witness. Let who that is present relate the message to who is absent, perhaps whom a message is taken to will understand it better than the one who heard it. Do not turn back after my demise smiting the necks of one another.

As for the desirability of making (another) Khutbah in the mid of the Days of Tashreeq, the proof for that is the hadith recorded on the authority of Busrah bint Nabhaan ﷺ who said: The Messenger of Allah ﷺ gave us a sermon on the Day of Ru'uus (i.e. the second day of days of Tashreeq) he ﷺ then said: What day is today. We replied: 'It is Allah and His Messenger that know better.'

He ﷺ said: 'Is today not the middle of the Days of Tashreeq? Abu Dawud recorded it and the men of its chain are sound.

Ahmad recorded the like of the hadith on the authority of Abu Nadrah ﷺ; the men of the chain are sound too. Abu Dawud also recorded what is similar from two men from Banu Bakr.

As for the assertion that the pilgrim will also perform Tawaf Ifadah (Tawaf on Arriving in Makkah after being at Arafah and other places) which is also called the Tawaf of Visit on the Day of Slaughter, the proof for that is the hadith recorded on the authority of Ibn Umar ﷺ as contained in the Sahihayn and other books that the Messenger of Allah ﷺ set forth (from Arafah to Makkah) on the Day of Slaughter, he ﷺ then went back to Mina where he observed the Zuhr Prayer.

Also in Sahih Muslim, there is a similar report on the authority of Jabir ﷺ.

What is intended by set forth in the above narration is that he performed Tawaf Ifadah.

Al-Nawawi ﷺ said: 'the scholars agree on the fact that this Tawaf i.e. Tawaf Ifadah is a pillar from the pillars of hajj; a hajj is not valid without it. They also agree on the fact that it is recommended to do it on the Day of Slaughter after throwing the pebbles and shaving the hair. If one were to delay it and perform it in the days of Tashreeq, it will be acceptable and there is no expiation due from him (over that); according to the consensus.

As for the assertion that when the pilgrim finishes from the rites of hajj, he will perform the Tawaf of Departure, the proof for that is the hadith recorded on the authority of Ibn Abbas ﷺ as found with Muslim and some other writers, he ﷺ said: 'People were leaving from every corner as they wish, the Messenger of Allah ﷺ then said:

لا يَنْفِرَنَّ أَحَدٌ حَتَّى يكُونَ آخِرُ عَهْدِهِ بِالبَيْتِ

None of you should leave except he has his final act be his homage to the House.

In a version in the Sahihayn, the Messenger of Allah ﷺ commanded the people that they should have their last contact with the House but he exempted a woman in her menstrual period.

There are several other Ahadith under the section.

The opinion of the majority of the scholars is that Tawaf of Departure is obligatory.

Malik, Dawud and Ibn Al-Mundhir say it is a recommended act; there is no sin upon whoever leaves it

باب أفضل أنْوَاع الهَدْي

Chapter 7.7 Best Animals for Slaughter



The best animal that can be slaughtered is the camel, then cow, then sheep. Seven persons can come together to slaughter a camel or a cow. It is permissible for the person who slaughtered an animal to eat from the meat of his animal; he can also make use of it as a ride (before it is killed). It is recommended that he makes a sign on the animal and put something on its neck to indicate that it is to be slaughtered. Whoever sent forth his animal (while he is still in his place) is not affected yet by the rulings that bind the pilgrims.

Explanation:

I say: As for the assertion that it is the camel that is the best, this is because the Messenger of Allah ﷺ slaughtered it and because it brings more benefits to the poor, so also is the cow if compared to sheep. This is when only one person is to slaughter the camel or cow. But when there are many people over a camel or a cow (as the case may be) such that their number is more than what can make the camel or the cow sufficient, there is a difference of opinion among the scholars as regards whether the best is a camel or a cow for seven people or a sheep for one person; what will be considered in that case is what will be apparently beneficial to the poor.

As for the assertion that seven people can gather over a camel just as they can gather over a cow, the proof for that is the hadith recorded on the authority of Jabir ﷺ as found in the Sahihayn and some other books wherein he ﷺ said: The Messenger of Allah ﷺ commanded us to gather over a camel and a cow; seven of us on one camel or one cow.

In the version of Muslim, Jabir ﷺ was asked: Can we gather a cow as we will gather on a camel? Jabir ﷺ replied: 'It is a form of camel.

Ahmad and Ibn Majah recorded on the authority of Ibn Abbas ﷺ that a man to the Prophet ﷺ and said: 'I have upon me the sacrifice of a camel and I don't have one, but I can afford buying it, should I buy one? The Messenger of Allah ﷺ commanded him to buy seven sheep and slaughter them.' The men of the report are sound.

The above hadith does not contradict the hadith recorded on the authority of Ibn Abbas ﷺ as found with Ahmad, An-Nasai, Ibn Majah and At-Tirmidhi

(who held it to be hasan); he (Ibn Abbass) said: We were on a journey then came the occasion of Eid al-Adha, seven of us slaughtered a cow and ten of us a camel.

It does not as well contradict this other hadith recorded in the Sahihayn on the authority of Abu Rafi bin Khadeej ﴿ﷺ﴾ that the Messenger of Allah ﴿ﷺ﴾ distributed (a booty) and he equated ten sheep to a camel.

The Messenger of Allah ﴿ﷺ﴾ equating seven sheep to a camel is as regards the animal for slaughter (at hajj) and equating ten sheep to a camel is as regards the Eid al-Adha and in distribution (of war booty).

Some of the scholars are of the view that seven sheep are equal to a camel in hajj slaughter. Imam at-Tahawi and Ibn Rushd ﴿ﷺ﴾ claimed there is a consensus over the matter but this is not correct; the difference of opinion over the matter is well-known.

As for the assertion that it is permissible for the person who wants to slaughter for Hajj sacrifice to eat from his slaughter, the proof for that is the hadith recorded on the authority of Jabir ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ commanded that a part of each of the animals slaughtered (for him) should be brought, he ﴿ﷺ﴾ then put them all in a pot and was cooked. He ﴿ﷺ﴾ and Ali ﴿ﷺ﴾ then ate from their meat and drank from their broth. Ahmad and Muslim recorded the hadith.

Also in the Sahihayn in a hadith recorded on the authority of 'A'ishah ﴿ﷺ﴾ that the Messenger of Allah ﴿ﷺ﴾ entered upon her on the Day of Slaughter and with him was some meat of cow, she asked: What is this? It was said: The Messenger of Allah ﴿ﷺ﴾ slaughtered on behalf of his wives.

Al-Nawawi ﴿ﷺ﴾ said: Scholars agree on the fact that eating from one's optional slaughter at hajj and on occasion of Eid al-Adha is Sunnah. End of quote.

What is clear however is that there is no difference between an optional slaughter and others because of Allah's Statement: Then eat thereof... [Hajj: 28].

As for the assertion that the person who makes a slaughter can ride on the animal he wants to slaughter, the proof for that is the hadith recorded on the authority of Anas ﴿ﷺ﴾ as found in the Sahihayn that the Messenger of Allah ﴿ﷺ﴾ saw a man leading his camel (for slaughter), the Messenger of Allah ﴿ﷺ﴾ said: 'Climb it.

The man replied: It is for slaughter. The Messenger of Allah ﴿ﷺ﴾ said again: Climb it. The man still replied: It is but for slaughter. The Messenger of Allah ﴿ﷺ﴾ repeated: Climb it. The still answered: It is for slaughter. The Messenger of Allah ﴿ﷺ﴾ commanded him and said: Climb it.

There is a similar report in the Sahihayn on the authority of Abu Hurairah ﷺ.

Ahmad and Muslim also recorded a hadith on the authority of Jabir ﷺ he was asked regarding riding on the animal to be slaughtered for hajj, and he ﷺ replied: I heard the Messenger of Allah ﷺ say: Ride it with care if you need to do so until you will get another ride.

As for the assertion that it is recommended to make a sign on the animal for slaughter, and put something around its neck, the proof for that is the hadith recorded by Muslim and other writers on the authority of Ibn Abbas ﷺ that the Messenger of Allah ﷺ observed Zhuhr Prayer at Dhul-Hulayfah then he ﷺ called for his camel and made a mark on the surface of its right thumb, some blood gushed out. He then hung a pair of shoes around its neck.

As for the assertion that the person sent his animal ahead is not bound by what binds the pilgrim, the proof for that is the hadith recorded on the authority of 'A'ishah ﷺ as found in the Sahihayn and some other books that the Prophet ﷺ would send his animals for slaughter from Madinah (to Makkah while he was still at home) but would not refrain from what a pilgrim would refrain from.

باب العُمْرة المفْرَدة

Chapter 7.8 Umrah Done without Hajj



The person performing Umrah will commence it from (one of the) the stations. The resident of Makkah will go outside the Sacred Region (the whole of Makkah); he will perform the Tawaf, the Sa'ee and then shave his head or cut his hair low. It is permissible to perform the Umrah any time of the year.

Explanation:

I say: As for the assertion that the person that wants to perform Umrah will commence the rites from the station, that is what is apparent because assuming the Ihram for Umrah is the same as assuming Ihram for Hajj. Many proofs have mentioned earlier as regards 'the stations', they are both Hajj and Umrah.

As for the assertion that the people of Makkah will go out of Makkah, the proof for that is what has come in the Sahihayn that the Messenger of Allah ﷺ commanded Abdul-Rahman ibn Abi Bakr رضي الله عنه to take 'A'ishah رضي الله عنها to At-Tanim to begin her Umrah from there.

As for the issue of Tawaf, Sa'ee, shaving the head and cutting the hair low, there is no difference of opinion among the scholars regarding them. It has come authentically from the Messenger of Allah ﷺ as found in the Sahihayn and some other books as well on the authority of a number of the Companions that he ﷺ commanded that whoever did not bring animal with him for slaughter should perform the Tawaf and the Sa'ee, and have his hair shaved or cut low; that if he did that he has become freed from the liabilities of hajj rites, and he could move close to his wife.

As for the assertion that the Umrah is permissible any time of the year, the proof for that is the hadith recorded on the authority of 'A'ishah رضي الله عنها by Abu Dawud that the Prophet ﷺ performed two Umrahs; one in the month of Dhul-Qadah and the other in the month of Shawwal.

Also in the Sahihayn, on the authority of Anas bin Malik رضي الله عنه that the Prophet ﷺ performed four Umrahs, all in the month of Dhul-Hijjah except the one he performed with his hajj.

Another example is the Umrah 'A'ishah رضي الله عنها performed wherein the Messenger of Allah ﷺ commanded Abdul-Rahman ibn Abi Bakr رضي الله عنه to lead her to At-

Taneem from where she commenced her Umrah she performed the Umrah after her hajj with the Messenger of Allah ﷺ.

The People of Jahiliyyah used to forbid performing Umrah with Hajj, the Prophet ﷺ refuted this practice by performing Umrah with the hajj, he as well commanded people to do so.

There is also in the Sahihayn and some other books a hadith recorded on the authority of Ibn Abbas رضي الله عنهما that the Prophet ﷺ said:

عُمْرَةٌ فِي رَمَضَانَ تَعْدِلُ حَجَّةً

The Umrah performed in [the month of] Ramadan is equal to a Hajj

8 كتاب النِّكَاح
Book of Nikah

باب الزواج و أحكامه

Chapter 8.1 Rulings on Marriage

Nikah is made permissible for whoever has Al-Baah (capability), but obligatory upon whoever fears he would fall into an illicit sexual relation. At-Tabattul (celibacy) is forbidden except for someone who cannot afford the primary obligations of a married person. It is recommended that the woman to be married be a loving, productive, beautiful, religious and wealthy woman, and as well be a woman of a noble birth. A previously married woman can be talked to directly regarding a (new) Nikah. It should be considered for her acceptance her contentment with whomever she sees pleasing and compatible with her. The permission regarding the Nikah of an unmarried woman should be sought from her father (or guardian). Her own acceptance is her silence. It is forbidden to make a proposal to a woman in her waiting-period, or a woman already been proposed. It is permissible to look at the woman that is proposed. Nikah is not valid except with the permission of the waliyy and two witnesses except if the waliyy unnecessarily withholds his permission or is not a Muslim. It is permissible for each of the bride and the bridegroom to appoint the same agent in the contract.

Explanation:

I say: As for the assertion that Nikah is for whoever has Al-Baah, this is due to what has come in the Sahihayn and some other books on the authority of Ibn Mas'ud, who said: the Messenger of Allah ﷺ said:

يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغَضُّ لِلْبَصَرِ وَأَحْصَنُ لِلْفَرْجِ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وِجَاءٌ

O Assembly of youths! Whoever possesses Al-Baah amongst you, let him get married; that will make him restrain his glance, and protect his private part. Whoever cannot afford that, should keep on fasting; that will have a castrating effect on him.

What is intended by Al-Baah is the ability to carry out a sexual act[15].

Several other Ahadith persuade towards Nikah.

As for the statement that Nikah will be obligatory on whomever is afraid he will fall into an illicit sexual relation if he does not do so, this is due to the fact that staying away from an unlawful act is an obligation, consequently if it is impossible to stay away from an illicit sexual act except by Nikah then it becomes obligatory. It is on this note that the Ahadith talking about the obligation of Nikah should be understood. An example of such hadith is the hadith recorded on the authority of Anas ﷺ in the Sahihayn and some other works, that a group of Companions of the Prophet ﷺ went to him and one of them said: I will not get married.' The second person said, I will continue to observe prayers in the night, I will never sleep. And the third person said, I will keep on fasting, I will never break. When the Messenger of Allah ﷺ heard all that, he said:

مَا بَالُ أَقْوَامٍ قَالُوا كَذَا وَكَذَا لَكِنِّي أَصُومُ وَأُفْطِرُ وَأُصَلِّي وَأَنَامُ وَأَتَزَوَّجُ النِّسَاءَ فَمَنْ رَغِبَ عَنْ سُنَّتِي فَلَيْسَ مِنِّي

What is it with the people who say such-and-such? As for me, I observe prayers (in the night) and I sleep as well; I fast (sometimes) and I break some other time. And I marry women. Whoever stays away from my Sunnah is not part of me.

Ibn Majah and At-Tirmidhi recorded in the hadith of Al-Hasan from Samurah that the Prophet ﷺ forbade At-Tabattul (celibacy). At-Tirmidhi rated the hadith to be sound. He said: Al-Ashath bin Abdil-Malik reported the hadith from Al-Hasan, who reported from Sad, who then reported from 'A'ishah ﷺ;

15 Interpreting *Baah* to mean only sexual ability is not apparent from the hadith as argued by some scholars, it has also however been interpreted to mean the least necessary capability required for a man to get married. (Editor)

each of the hadith is authentic. Meanwhile, there is a great debate over Al-Hasan hearing Ahadith from Samurah.

Ahmad also mentioned a hadith forbidding celibacy, so also Ibn Hibban in his Sahih on the authority of Anas ﷺ.

But Ibn Majah recorded on the authority of 'A'ishah ﷺ that the Messenger of Allah ﷺ said:

النِّكَاحُ مِنْ سُنَّتِي فَمَنْ لَمْ يَعْمَلْ بِسُنَّتِي فَلَيْسَ مِنِّي

Nikah is from my Sunnah; whoever does not act with my Sunnah is not part of me.

As for the prohibition from celibacy, the proofs earlier mentioned indicate that.

As for the assertion that Nikah will be permissible for whoever cannot afford the primary obligations for Nikah, the proof for that is what has come from the Great Book and authentic Sunnah regarding prohibition from hurting women, and commandment regarding doing good to them. Whoever cannot ensure that (i.e., not hurting women) should not venture into a phenomenon that will lead him into another prohibition. It is upon this that the Ahadith talking about celibacy and loneness should be understood.

As for the statement that the woman must be loving, productive, virgin, beautiful, noble, religious [and wealthy], the hadith stating that is the hadith recorded on the authority of Anas ﷺ as it has come from [Al-Imam] Ahmad, Ibn Hibban, who rendered it authentic; that the Prophet ﷺ said:

تَزَوَّجُوا الْوَدُودَ الْوَلُودَ فَإِنِّي مُكَاثِرٌ بِكُمُ الْأَنْبِيَاءَ يَوْمَ الْقِيَامَةِ

Marry the loving and productive women, I shall count on your number among the Prophets on the Day of Resurrection.

Ahmad collected the like of the hadith on the authority of Ibn Amr; but there is Jarir bin Abdillah Al-Aamiri in the chain. Some scholars hold him to be trustworthy but he has some weaknesses. Abu Dawud also recorded the like

of the hadith, so also An-Nasai and Ibn Hibban on the authority of Maqal bin Yassar.

Also it comes in the Sahihayn and some other books of hadith on the authority of Jabir Ibn Abdillah) that the Prophet ﷺ said to him:

تَزَوَّجْتَ بِكْرًا أَمْ ثَيِّبًا قَالَ: ثَيِّبًا، قَالَ: فَهَلَّا تَزَوَّجْتَ بِكْرًا تُلَاعِبُهَا وَتُلَاعِبُكَ

Did you marry a virgin or a previously-married woman? He replied: A married woman. The Prophet ﷺ said: Why not a virgin, whom you will play with and she will play with you.

There is also another hadith in the Sahihayn on the authority of Abu Hurairah ﷺ that the Prophet ﷺ said,

تُنْكَحُ الْمَرْأَةُ لِأَرْبَعٍ لِمَالِهَا وَلِحَسَبِهَا وَلِجَمَالِهَا وَلِدِينِهَا فَاظْفَرْ بِذَاتِ الدِّينِ تَرِبَتْ يَدَاكَ

Women are married for four reasons: Her wealth, nobility, beauty, and religion. Go after the one with religion lest you lose.

But in the version of Muslim and some other books, he ﷺ said:

إِنَّ الْمَرْأَةَ تُنْكَحُ عَلَى دِينِهَا وَمَالِهَا وَجَمَالِهَا فَعَلَيْكَ بِذَاتِ الدِّينِ تَرِبَتْ يَدَاكَ

Indeed women are married for the reasons of religion, wealth, and beauty. Take the one upon religion lest you lose.

As for the assertion that a previously married woman is talked to herself, the proof for that is what has come in Sahih Muslim that the Prophet ﷺ sent a marriage proposal to Umm Salamah ﷺ herself.

As for the statement that what is required from her is her acceptance, the proof for that is the hadith of Ibn Abbas ﷺ as recorded in Sahih Muslim and some other books:

الثَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ تُسْتَأْذَنُ فِي نَفْسِهَا وَإِذْنُهَا صُمَاتُهَا

A previously-married woman has more right to herself (regarding her Nikah) than her guardian. As for the virgin, her father has to seek her consent, and her consent is expressed with her silence.

Also in the Sahihayn and some other books on the authority of Abu Hurairah ﷺ and 'A'ishah ﷺ with a similar report; so also Ahmad, Abu Dawud, Ibn Majah and Al-Daraqutni on the authority of Ibn Abbas ﷺ that a young virgin came to the Messenger of Allah ﷺ and mentioned that her father married her out without her consent, the Prophet ﷺ then asked her to make a choice. [Al-Hafidh Ibn Hajar] said the chain of the hadith is authentic.

There is a similar report on the authority of Jabir ﷺ as recorded by An-Nasai. So also on the authority of 'A'ishah ﷺ as recorded by An-Nasai also. Ibn Majah reported on the authority of Abdullah bin Buraydah ﷺ from his father that he said a young girl came to the Messenger of Allah ﷺ and said, 'My father married me to my cousin to earn a good reputation. The Messenger of Allah ﷺ asked her to make a choice; she said, I now consent to what my father did, I only want women to know that fathers do not have authority in the issue. The men of the narration are trustworthy. Ahmad and An-Nasai recorded it too on the authority of 'A'ishah ﷺ as Ibn Buraydah reported from her.

As for the issue of compatibility, the proof for that is the hadith found with At-Tirmidhi wherein the Prophet ﷺ said:

ثَلَاثٌ لَاتُؤَخَّرْ الصَّلَاةُ إِذَا أَتَتْ وَالْجَنَازَةُ إِذَا حَضَرَتْ وَالْأَيِّمُ إِذَا وَجَدْتَ لَهَا كُفْئًا

Three matters are not to be delayed: Salah when it is due, funeral when it is ready and a previously-married woman when a befitting man is ready for her.

Al-Hakim too recorded on the authority of Ibn Umar ﷺ that the Prophet ﷺ said:

العَرَبُ أَكْفَاءٌ بَعْضُهُم لِبَعْضٍ وَحَيٌّ لِحَيٍّ ورَجُلٌ لِرَجُلٍ إِلَّا حَائِكٌ أَوْ حَجَّامٌ

Arabs are compatible with one another, tribe to tribe, man to man except with respect to a weaver or a cupper.[16]

There is an unknown man in the hadith above. Abu Hatim said the hadith is a lie; that it has no basis. [Scholars of hadith said it is a fabrication]. But Al-Bazzar recorded it in his musnad via another route on the authority of Muadh bin Jabal ﷺ from the Messenger of Allah that he ﷺ said:

الْعَرَبُ بَعْضُهَا أَكْفَاءٌ لِبَعْضٍ

Arabs are compatible with one another...

There is one Sulayman bin Abi Al-Jun in the chain.

Meanwhile the hadith in the Sahihayn and some other books on the authority of Abu Hurairah ﷺ is sufficient as evidence for this issue, [that the Messenger of Allah ﷺ said:

خِيَارُكُمْ فِي الْجَاهِلِيَّةِ خِيَارُكُمْ فِي الإِسْلَامِ إِذَا فَقِهُوا

The best of you in the Jahiliyyah (the time of ignorance) is the best of you in Islam provided they have the proper understanding (of the Deen).

At-Tirmidhi also recorded on the authority of Abu Hatim Al-Muzani who said the Messenger of Allah said:

16 This wording could not be found with Al-Hakim except in Sunan Al-Bayhaqi.

إِذَا أَتَاكُمْ مَنْ تَرْضَوْنَ دِينَهُ وَخُلُقَهُ فَأَنْكِحُوهُ، إِن لا تَفْعَلُوهُ تَكُنْ فِتْنَةٌ فِي الأَرْضِ وَفَسَادٌ كَبِير

When a man whose Deen and character you are pleased with comes to you (asking for your daughter's hand in marriage), marry her to him lest you cause a great tribulation on the land.

The people said, What if the man has such-and-such defect. He ﷺ said again:

إِذَا جَاءَكُمْ مَنْ تَرْضَوْنَ دِينَهُ وَخُلُقَهُ فَأَنْكِحُوهُ

When a man whose Deen and character you are pleased with comes to you (asking for your daughter's hand in marriage), marry her to him.

He ﷺ repeated that three times. At-Tirmidhi said the hadith is authentic. At-Tirmidhi also recorded it on the authority of Abu Hurairah ﷺ, while Al-Daraqutni recorded from Ibn Umar ﷺ that he said: I will forbid people who are well-to-do to marry one another except those who are compatible among them.

As for the assertion that proposal to young girls must be communicated to their guardians. The proof for that is what has come in Sahih Al-Bukhari and some other books on the authority of Urwah that the Messenger of Allah ﷺ sent his proposal about 'A'ishah ﷺ to Abu Bakr ﷺ.

As for the statement that the young girl can express her consent in silence, the proof for that has been mentioned in the Ahadith earlier cited.

The statement that it is forbidden to send a proposal to a woman while she is in her waiting period, the proof for that was the incident of the divorce that occurred between Fatimah bint Qays ﷺ and her husband. When he divorced her the third time, the Messenger of Allah ﷺ did not decree any home or spending for her from her husband. The Messenger of Allah ﷺ told her, When you become pure, let me know. And she did as was told. The hadith can be found in Sahih Muslim and other works.

Al-Bukhari also recorded on the authority of Ibn Abbas ﷺ while giving the meaning of this Verse:

وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ ...

And there is no sin on you if you make a hint of betrothal... [Al-Baqarah: 235]

He said: the man would say (while she hears): I want to get married, and I hope I can get a righteous woman.

Al-Bayhaqi recorded from Muhammad bin Ali Al-Baqir that the Messenger of Allah ﷺ entered upon Umm Salamah رضي الله عنها while she was undergoing her waiting period after the death of Abu Salamah رضي الله عنه. The Prophet ﷺ said: You know I am the Messenger of Allah and the best among His creatures, and you know my standing with my people. That was how the Messenger of Allah ﷺ proposed to her. But there is a break in the chain of the hadith.

The Author of Fathul-Bari said: Scholars agree that what is intended by this (that is, the Verse mentioned shortly) is as regards the woman who lost her husband. They disagree as to the woman waiting after her husband had divorced her the last time, or a woman whose Nikah is under consideration. As for a woman waiting after a reversible divorce, Al-Shafi'i said it is not permissible for anybody to make a hint of Nikah to her. Summarily, making a clear proposal to all categories of the waiting women is forbidden but a hint is permissible in the case of a woman who lost her husband; there is a difference of opinion with regards to a woman waiting from a final divorce.

As for the prohibition from sending a proposal over an existing proposal, the proof for that is the hadith of Uqbah bin Aamir رضي الله عنه that the Messenger of Allah ﷺ said:

الْمُؤْمِنُ أَخُو الْمُؤْمِنِ فَلاَ يَحِلُّ لِلْمُؤْمِنِ أَنْ يَبْتَاعَ عَلَى بَيْعِ أَخِيهِ وَلاَ يَخْطُبُ عَلَى خِطْبَةِ أَخِيهِ حَتَّى يَذَرَ

Believers are brothers to one another, It is not permissible for a believer to place a price on a commodity his brother had placed a price on until the latter leaves it, nor should he send a marriage proposal over his brother's proposal until the latter leaves it.

The hadith is in Sahih Muslim and some other books of hadith as well. Al-Bukhari and some others also recorded on the authority of Abu Hurairah رضي الله عنه that the Messenger of Allah ﷺ said:

لاَ يَخْطُبُ الرَّجُلُ عَلَى خِطْبَةِ أَخِيهِ حَتَّى يَنْكِحَ أَوْ يَتْرُكَ

No man should send a marriage proposal over his brother's proposal until he marries the woman or leaves her.

Al-Imam Al-Bukhari also recorded in the hadith of Ibn Umar ﷺ that the Messenger of Allah ﷺ said:

لا يَخْطُبُ الرَّجُلُ عَلَى خِطْبَةِ الرَّجُلِ حَتَّى يَتْرُكَ الخَاطِبُ قَبْلَهُ أَو يَأْذَنَ لَه

No man should make any proposal on his brother's proposal until the person leaves the proposal or permits the other to go ahead.

The majority of the people of knowledge are of the view that the act of making a proposal over the proposal of another man is prohibited.

As for the statement that it is permissible for the man to look at the woman he wants to propose for a marriage, the proof for that is the hadith with Ahmad, An-Nasai, Ibn Majah, At-Tirmidhi, Ad-Darimi and Ibn Hibban, who declared it authentic, as reported from Al-Mughirah ﷺ, that he proposed a woman and the Messenger of Allah ﷺ said: Go and look at her, that will give a greater chance of an increase in the love between you.

Muslim also recorded a hadith on the authority of Abu Hurairah ﷺ who said he was in the presence of the Messenger of Allah ﷺ when a man came to him and told him that he had married a woman among the Ansar. The Messenger of Allah ﷺ then said, Have you looked at her? The man replied in the negative, then the Messenger of Allah ﷺ said: Go and look at her; Ansar women have a particular thing on their eyes.

There are several other Ahadith on the matter.

As for the statement that a Nikah is not valid except with the consent of the woman's waliyy (male guardian), the proof for that is the hadith of Abu Musa ﷺ as recorded by Ahmad, Abu Dawud, Ibn Majah, At-Tirmidhi, Ibn Hibban and Al-Hakim, who declared it authentic, that the Prophet ﷺ said:

لاَ نِكَاحَ إِلاَّ بِوَلِيٍّ

A Nikah is not valid except with the consent of the bride's waliyy.

So also is the hadith of 'A'ishah ﷺ as found with Ahmad, Abu Dawud, Ibn Majah, and At-Tirmidhi, who declared it sound, so also Ibn Hibban, Al-Hakim, and Abu Awanah, that the Prophet ﷺ said:

أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ فَنِكَاحُهَا بَاطِلٌ فَنِكَاحُهَا بَاطِلٌ فَإِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا، فَإِنِ اشْتَجَرُوا فَالسُّلْطَانُ وَلِيُّ مَنْ لا وَلِيَّ لَهُ

Any woman who is married without the consent of her waliyy, her Nikah is invalid. If the man had entered upon her (while still in that state), then she will be entitled to the mahr (bride-price) due to what has been made permissible of her private part. If there is a controversy as to the matter, the Sultan will serve as the waliyy of any woman with none.

There are several other Ahadith on the matter.

Al-Hakim said: There are authentic reports about this matter from the wives of the Prophet ﷺ such as 'A'ishah, Umm Salamah and Zaynab bint Jahsh ﷺ. Then he mentioned about thirty companions who had a similar report.

The waliyy, according to the majority of the scholars, is the closest person to the woman in consanguinity. Abu Hanifah ﷺ is of the opinion that all the woman's blood relations can be her waliyy, as reported from him.

As for the consideration of two witnesses, the proof for that is the hadith of Imran bin Husayn ﷺ as found with Al-Daraqutni, Al-Bayhaqi in al-Ilal, so also is Ahmad as reported by his son, Abdullah, that the Prophet ﷺ said:

لاَ نِكَاحَ إِلاَّ بِوَلِيٍّ وَشَاهِدَيْ عَدْلٍ

Nikah is not valid except with a waliyy and two trustworthy witnesses.

There is one Abdullah bin Muharrar in the chain; he is a rejected narrator.

Al-Daraqutni and Al-Bayhaqi recorded on the authority of 'A'ishah ﵂ that the Messenger of Allah ﷺ said:

لاَ نِكَاحَ إِلاَّ بِوَلِيٍّ وَشَاهِدَيْ عَدْلٍ فَإِنْ تَشَاجَرُوا فَالسُّلْطَانُ وَلِيُّ مَنْ لاَ وَلِيَّ لَهُ

Nikah is not valid except with a waliyy and two trustworthy witnesses. When there is a dispute, the Sultan will serve as the waliyy for the woman who has none.

The chain of the hadith (above) is weak.

At-Tirmidhi also recorded on the authority of Ibn Abbas that the Prophet ﷺ said:

الْبَغَايَا اللاَّتِي يُنْكِحْنَ أَنْفُسَهُنَّ بِغَيْرِ بَيِّنَةٍ

Prostitutes are those women who marry off themselves without the proof (of guardianship from her waliyy).

At-Tirmidhi said the hadith is authentic as a mawquf[17]. But all these Ahadith and some other reports that have come with the same interpretation give support to one another (such that it can be said that the reports are collectively sound). Majority of the scholars have the opinion of the necessity of the waliyy in Nikah.

As for the statement that a non-cooperating waliyy or a non-Muslim Waliyy is not to be recognized, the proof for that is the Word of Allah the Almighty that goes thus:

17 A narration that stops with a Companion.

فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ بِالْمَعْرُوفِ

...do not prevent them from marrying their (former) husbands... [Al-Baqarah: 232].

Another proof was the marriage of the Messenger of Allah ﷺ to Umm Habibah the daughter of Abu Sufyan; the consent of her father was never sought because he was then a kaafir.

As for the assertion that it is permissible to appoint one agent to serve as the representative of both spouses in the marriage contract, the proof for that is the hadith of Uqbah bin Aamir ﷺ as recorded with Abu Dawud that the Prophet ﷺ said to a man: Are you pleased that I marry you to this woman? The man said, Yes. He ﷺ also said to the woman, Are you pleased that I marry you to this man? she said, Yes. Then he ﷺ married them to each other. This opinion is shared by many of the scholars such as Al-Awzai, Rabiah, Ath-Thawri, Malik, Abu Hanifah (including many of his companions), Al-Layth, Al-Hadawiyyah, Abu Thawr. But it was mentioned in the book, al-Bahr, that An-Nasir was not of that view, so also Al-Shafi'i and Zufar.

The author of Al-Fath (Ibn Hajar) reported Malik to have said that if a woman were to say to her waliyy, Marry me to any man you like. Then if the man marries her to himself or someone else he chooses, the Nikah becomes binding even if the woman does not know the man. Al-Shafi'i said, The Sultan ought to marry her to the first waliyy, or another waliyy should do that. Zufar shared the opinion.

باب الأَنْكِحَة المحَرّمة

Chapter 8.2 Forbidden Marriages



Nikah Mut'ah is abrogated, while Nikah Tahlil and Nikah Shigar are prohibited. It is incumbent that the husband fulfils his wife's rights due from him except a right that legalizes a forbidden act or vice versa. It is not permissible for a man to marry an adulteress or an idolatress and vice-versa. So also it is not permissible to marry whomever has been clearly stated in the Qur'an to be forbidden for Muslims in marriage. Fosterage has the same effect as consanguinity. It is also forbidden to combine a woman with her maternal or paternal aunts in marriage. So also it is forbidden to marry above the permissible number of wives (which is four except for the Prophet ﷺ) for a free person or slave. When a slave gets married without the consent of his master, his Nikah is invalid. When a female slave is manumitted then she becomes responsible for herself, she has the freedom to make any choice regarding her husband (in slavery). A Nikah can be invalidated by a discovery of fault in any of the spouses. Marriages celebrated during the Time of Ignorance are valid when parties to them become Muslims, and provided those marriages did not contradict Islam. If one of the non-Muslim spouses accepts Islam, the Nikah becomes null and Iddah (waiting) becomes obligatory (on the woman). If a non-Muslim woman accepted Islam and has not remarried (after becoming a Muslim too), and her former non-Muslim husband accepted Islam later, they would need not have a new contract of marriage even if the time lapse were to be very wide so far it is their choice.

Explanation:

I say: As for Nikah Mut'ah, there is no debate to the fact that it was used to be permissible in the Shari'ah as it is clearly stated in the Qur'an:

فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً

...so with those of whom you have enjoyed sexual relations, give them their mahr as prescribed... [An-Nisa: 24].

Another proof for it is what is stated in the Sahihayn on the authority of Ibn Mas'ud ﷺ who said: 'We used to go out in war behind the Prophet ﷺ and

we would not take women along. We asked him if we could castrate ourselves but the Messenger of Allah ﷺ forbade us from that, but he later gave us the respite to temporarily marry any woman while we could give her a piece of cloth as her mahr.

There are several other Ahadith in the section. But the Ahadith talking about the abrogation of the act have come authentically from a number of Companions. Muslim and other collectors of hadith recorded on the on the authority of Saburah Al-Juhani that he fought the war of Conquest of Makkah behind the Messenger of Allah ﷺ so he ﷺ allowed them to have temporary marriages with women. He said: the Messenger of Allah ﷺ had not left Makkah when he prohibited the act again. Among what he said was: Allah has forbidden it until the Day of Resurrection.

At-Tirmidhi also recorded on the authority of Ibn Abbas ﷺ that he said: 'the temporary marriage was only permissible during the first era of Islam until the following Verse was revealed:

إِلَّا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِين

...except from their wives or (the captives and slaves) that their right hands possess, for then, they are free from blame; [Al-Muminun: 6].

It was also recorded in the Sahihayn on the authority of Ali that the Messenger of Allah ﷺ (finally) forbade temporary marriage on the Day of Khaybar. There are several other Ahadith on the topic. Meanwhile there is a great difference over the matter as I mentioned it in the book, Sharh Al-Muntaqa, but the view of whoever says the act is forbidden until the Day of Resurrection is more acceptable in this matter.

As for the prohibition of Nikah Tahlil[18], the proof for that is the hadith recorded on the authority of Ibn Mas'ud ﷺ as found with Ahmad, An-Nasai, and At-Tirmidhi, who authenticated it, that the Messenger of Allah ﷺ cursed a man who does Nikah Tahlil and the man who it is done for.

Ibn Al-Qattan too said the hadith is authentic, so also was Ibn Hibban. The hadith has another route as recorded by Abdul Razzaq (the author of Al-Musannaf). Yet there is the third route recorded by Ishaq in his Musnad.

18 A form of Nikah done with the aim of assisting a husband who has completely divorced a woman to marry her back; the man assisting would marry the woman but would not copulate with her before divorcing her. Thereafter, the former husband would remarry her.

Ahmad, Abu Dawud, Ibn Majah and At-Tirmidhi also recorded a similar hadith on the authority of Ali. Ibn As-Sakan says the hadith is authentic.

Ibn Majah and Al-Hakim also recorded on the authority of Uqbah bin Aamir ﷺ that the Messenger of Allah ﷺ said:

أَلاَ أُخْبِرُكُمْ بِالتَّيْسِ الْمُسْتَعَارِ قَالُوا : بَلَى يَا رَسُولَ اللَّهِ قَالَ : هُوَ الْمُحَلِّلُ لعَنَ اللَّهُ الْمُحَلِّلَ وَالْمُحَلَّلَ لَهُ

Shall I inform you of a rented he-goat (for mating)? The Companions answered in the affirmative. Then the Messenger of Allah ﷺ said the man who does Nikah Tahlil – may Allah curse a man who does Nikah Tahlil; and the man whom it is done for.

There is one Yahya bin Uthman in the chain; he is a weak narrator. The hadith is also said to have a problem of Irsal[19]. Meanwhile Ahmad, Al-Bayhaqi, Ibn Abi Hatim and At-Tirmidhi – in his Ilal – recorded a similar hadith on the authority of 'A'ishah ﷺ. Al-Bukhari said it is a sound hadith.

Al-Hakim and At-Tabarani recorded on the authority of Umar ﷺ that the Companions used to count Nikah Tahlil as an act of bloodletting during the era of the Messenger of Allah ﷺ .

As for the prohibition of Nikah Shigar[20], the proof for that is the prohibition that has come regarding it in the hadith recorded by Ibn Umar ﷺ in the Sahihayn and some other works that the Messenger of Allah ﷺ forbade Nikah Shigar. Muslim recorded on the authority of Abu Hurairah ﷺ that the Messenger of Allah ﷺ forbade Nikah Shigar.

Nikah Shigar is when a man says to the waliyy of a woman: Marry your daughter to me, I will marry mine to you; or marry your sister to me, I will marry mine to you.

Muslim also recorded on the authority of Ibn Umar that the Prophet ﷺ said:

19 Whereby a Tabi'i would report a hadith directly from the Messenger of Allah ﷺ apparently leaving out a companion.

20 Whereby a man would marry out his daughter to another man and then marry the daughter of that other man. The exchange is the mahr.

لا شِغَارَ فِي الإِسْلامِ

There is no Nikah Shigar in Islam.

There are other Ahadith on the topic.

Ibn Abdil-Barr ﷺ said: scholars agree on the fact that Nikah Shigar is not permissible but they disagree as to its validity (when done). The majority of the scholars are of the view that it is null. Al-Shafi'i ﷺ said: This kind of Nikah is null and void as that of Nikah Mut'ah. But Abu Hanifah ﷺ said the Nikah is permissible, and that each of the cases requires the payment of the mahr.

As for the statement that it is obligatory for the husband to fulfil the rights of the woman (as demanded in the Nikah), the proof for that is the hadith of Uqbah bin Aamir ﷺ who said the Messenger of Allah ﷺ said:

أَحَقُّ الشُّرُوطِ أَنْ يُوَفَّى بِهِ مَااسْتَحْلَلْتُمْ بِهِ الْفُرُوجَ

Among the most important rights that must be fulfilled are rights that make you accessible to a woman's private part.

The hadith can be found in the Sahihayn and some other works. Meanwhile, rights that make a forbidden act to be permissible or vice-versa are not such that should be fulfilled, as proofs have come with. There is an established prohibition regarding entering into some terms (with a woman before Nikah) as contained in the hadith of Abu Hurairah ﷺ recorded in the Sahihayn and some other works that the Prophet ﷺ forbade that a man should make a proposal over the proposal of his brother, or that he should make a transaction over his transaction, nor should a woman ask for the divorce of another woman so that she can fill her place in her matrimonial home; she needs not do that, it is Allah that will provide for her.

Ahmad also recorded in the hadith of Abdullah bin Umar ﷺ that the Prophet ﷺ said:

لاَ يَحِلُّ أَنْ يَنْكِحَ الْمَرْأَةَ بِطَلاَقِ أُخْرَى

It is not permissible to marry a woman when another one is divorced (on that account)[21].

As for the assertion that it is forbidden for a Muslim man to marry an adulteress or an idolatress and vice-versa, the proof for that is what Ahmad recorded with an authentic chain, so also At-Tabarani in Al-Kabir and Al-Awsat, on the authority of Abdullah ibn Amr ﷺ that a Muslim man sought the permission from the Messenger of Allah ﷺ regarding a woman whose name was Umm Mahzul who was an adulteress, on the condition that he was going to take of her provisions. The Prophet ﷺ then recited this Verse to the man:

الزَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ

The fornicator does not marry except a [female] fornicator or polytheist, and none marries her except a fornicator or a polytheist, and that has been made unlawful to the believers. [An-Nur: 3]

Abu Dawud, An-Nasai and At-Tirmidhi – who classified it as hasan – recorded on the authority of Ibn Amr ﷺ that Marthad bin Abi Marthad Al-Ghanawi used to help the captives in Makkah. There was a prostitute whose name was Anaq and was a friend of this man. He said that he came to the Messenger of Allah ﷺ and said: O Messenger of Allah! Can I marry Anaq? The Messenger of Allah ﷺ kept quiet until this Verse was revealed to him:

الزَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ

The fornicator does not marry except a [female] fornicator or polytheist, and none marries her except a fornicator or a polytheist, and that has been made unlawful to the believers. [An-Nur: 3]

21 There is Abdullah Ibn Lai'ah in the chain of the hadith. Ash-Shaykh Al-Albani (may Allah bestow mercy on him) said his presence in the chain makes it weak. See Ir'waul-Ghalil 6/351.

The Messenger of Allah ﷺ called him and said: Do not marry her.

Abu Dawud also recorded with an authentic chain on the authority of Abu Hurairah ﷺ that the Messenger of Allah ﷺ said:

الزَّانِي الْمَجْلُودُ لَا يَنْكِحُ إِلَّا مِثْلَهُ

An adulterer whom beating punishment had been fulfilled upon would not marry anyone except his like.

Ibn Majah, At-Tirmidhi – who classified it as authentic – recorded on the authority of Amr bin al-Ahwas ﷺ that he witnessed the Farewell Pilgrimage with the Prophet ﷺ where he was saying:

اسْتَوْصُوا بِالنِّسَاءِ خَيْرًا فَإِنَّمَا هُنَّ عِنْدَكُمْ عَوَانٍ لَيْسَ تَمْلِكُونَ مِنْهُنَّ شَيْئًا غَيْرَ ذَلِكَ إِلَّا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ فَإِنْ فَعَلْنَ فَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبَرِّحٍ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا

Relate carefully with women, they are like bondswomen with you, you own nothing about them except that, (you will be harsh on them) except if they come with a clear sin, then you can desert them in their beds, and then beat them lightly if they do not stop, but when they obey you, do not transgress against them.

Abu Dawud and An-Nasai also recorded on the authority of Ibn Abbas ﷺ who said a man came to the Prophet ﷺ and said: My wife does not refuse any hand that touches her. The Messenger of Allah ﷺ said: Send her away! the man said, I fear lest my heart follows her. He said, Then enjoys her. The men of the chain are men of the Sahihayn. He only said the opposite because his ruling both applies to man and woman as the Verse indicates:

الزَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ

The adulterer marries none but an adulteress or a mushrikah and the adulteress none marries her except an adulterer or a mushrik... [An-Nur: 3].

As for the statement that it is forbidden to marry a woman whom Qur'an clearly says it is forbidden to marry, that is derived from what is clear in the Word of Allah:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمْ مِنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللَّاتِي فِي حُجُورِكُمْ مِنْ نِسَائِكُمُ اللَّاتِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your foster mother who gave you suck, your foster milk suckling sisters, your wives' mothers, your step daughters under your guardianship, born of your wives to whom you have gone in - but there is no sin on You (to marry their daughters) if you have not gone in them -, the wives of your sons who (spring) from your own loins, and two sisters in wedlock at the same time, except for what has already passed; verily, Allah is Oft-Forgiving, Most Merciful. [An-Nisa: 23].

And Allah the Almighty said after that:

وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ

All others (besides those mentioned) are lawful for you... [An-Nisa: 24].

As for the statement that fosterage is like consanguinity (in effect), the proof for that is what is established in the Sahihayn and some other books on the authority of Ibn Abbas that the Messenger of Allah ﷺ said:

يَحْرُمُ مِن الرَّضَاعِ مَا يَحْرُمُ مِن الرَّحِمِ

Fosterage prohibits as the womb does.

In another version as the consanguinity does.

There is another hadith on the authority of 'A'ishah رضي الله عنها also in the Sahihayn back to the Prophet that he ﷺ said:

يَحْرُمُ مِنْ الرَّضَاعَةِ مَا يَحْرُمُ مِنْ الْوِلَادَةِ

Fosterage prohibits as the reason of birth does.

Ahmad and At-Tirmidhi – who classified it as Sahih – recorded on the authority of Ali رضي الله عنه that the Messenger of Allah ﷺ said:

إِنَّ اللَّهَ حَرَّمَ مِنْ الرَّضَاعِ مَا حَرَّمَ مِنْ النَّسَبِ

Indeed Allah makes unlawful as a result of fosterage what He makes unlawful as a result of consanguinity.

The people of knowledge say: The people prohibited for a man in marriage are seven: His mother, sister – as stated in the Qur'an – daughter, paternal aunt, maternal aunt, sister's daughter and brother's daughter. All these people are prohibited for a man in terms of consanguinity so also they are prohibited to him in terms of fosterage.

But there is a difference of opinions among the scholars as to if what fosterage prohibits in marriage is the same as what is prohibited through connections as in-laws. Ibn al-Qayyim رحمه الله has dealt extensively with that in Al-Hady.

As for the statement that it is forbidden to merge between a woman and her maternal or paternal aunt as co-wives, the proof for that is the hadith of Abu Hurairah ﴿ﷺ﴾ found in the Sahihayn and some others wherein he said the Messenger of ﴿ﷺ﴾.

نَهَى أَنْ يُجْمَعَ بَيْنَ المَرْأَةِ وعَمَّتِها وبَيْنَ المَرْأَةِ وخَالَتِها

He forbade that the maternal aunt or paternal aunt of a woman should be joined with her in marriage.

In another version also recorded by Al-Bukhari and Muslim, the Messenger of Allah ﴿ﷺ﴾ forbade that a woman be married over her paternal or maternal aunt (as co-wives). Another version says, between a woman and her paternal aunt or between a woman and her maternal aunt.

There are several other Ahadith on the topic. At-Tirmidhi has mentioned a prohibition regarding that, from most of the people of knowledge. He said: We are not aware of any controversy between them over that.

Ibn Mundhir said: I do not know any contradictory view as regards that today. Al-Shafi'i, Al-Qurtubi and Ibn AbdilBarr all said there a consensus over it.

As for the prohibition regarding taking wives above the permissible number, the proof for that is the hadith of Qays bin Al-Harith ﴿ﷺ﴾ who said: I embraced Islam and I had eight wives, I went to the Messenger of Allah ﴿ﷺ﴾ and mentioned that to him, he said to me: make a choice of four amongst them. Abu Dawud and Ibn Majah recorded the hadith. However there is one Muhammad bin AbdurRahman bin Abi Layla in the chain, more than one scholar of hadith have declared him weak.

Ibn Abdil-Barr said: There is no hadith over the matter except one, and that one has not come authentically.

However, that which will clear this issue [whether or not it is compulsory that one divorces other wives when one has more than four at the time of embracing Islam] will be discussed shortly, and that will be taken from what was the case with a number of people who embraced Islam while they had more than four wives with them during the life time of the Prophet ﴿ﷺ﴾.

As for making evidence with the Word of Allah:

فَانكِحُوا مَا طَابَ لَكُم مِّنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ

...then marry (other) women of your choice, two, or three, or four... [An-Nisa: 3].

I have explained that in my work I titled Sharh Al-Muntaqa as well as the other I titled Hashiya Ash-Shifa. It has been said by some that there is no difference of opinion regarding the illegality of keeping more than four wives. Such statement is faulty as I explained in the aforementioned books[22].

As for the number of wives permissible for a slave to keep at the same time, Al-Bayhaqi mentioned, so also Ibn Abi Shaybah that the Companions agreed as to the fact that a slave should not have more than two wives at a time. Al-Shafi'i also mentioned the consensus from the Companions over that. Al-Daraqutni recorded from Umar that he said: A slave can only marry two wives, and when he divorces two statements of divorce are sufficient.

How a female-slave is divorced and her Iddah is done will be discussed later under the section on Iddah.

Therefore, whoever bears the opinion that the consensus of the Companions is a proof takes this view but whoever says it is no proof can make permissible for a slave what is permissible for a free-man with respect to the number of wives he one can keep at a time. I have explained the ruling regarding Ijma in the beginning of the book, Hashiya Ash-Shifa.

As for the assertion that the Nikah of a slave is void if he gets married without the consent of his master, the proof for that is the hadith of Jabir ﷺ as recorded by Ahmad, Abu Dawud, At-Tirmidhi, Ibn Majah and Al-Hakim, who classified it authentic, that the Messenger of Allah ﷺ said:

مَنْ تَزَوَّجَ بِغَيرِ إِذْنِ سيِّدِهِ فَهُوَ عَاهِرٌ

Whoever gets married without the consent of his master is an adulteress.

Ibn Majah also recorded it on the authority of Ibn Umar ﷺ. At-Tirmidhi

22 The only people who differ from this general agreement of the Muslims right from the time of the companions till date are the erratic sect of Shee'ah. The consensus of the

said: That is not authentic; the authentic report is recorded on the authority of Jabir. Abu Dawud also recorded it on the authority of Ibn Umar ﷺ but there is Mandal bin Ali in its chain; he is a weak narrator.

Majority of the scholars are of the view of the invalidity of the contract of a slave without the consent of his master. Malik ﷺ said: The contract is valid but the master can repudiate it. That view was rejected on the basis that he is an adulterer and what he does is invalid. There is a hadith on the authority of Jabir ﷺ that actually mentioned that what the slave does is null.

As for the statement that when a slave girl is freed from slavery, she is responsible for any decision she makes for herself, and she has the choice to make about her husband in slavery. The proof for that is the hadith recorded on the authority of 'A'ishah ﷺ as rescored in Sahih Muslim and some other books that Barirah ﷺ was asked by the Prophet ﷺ to make a choice while her husband was still a slave. There is also that report in Sahih Al-Bukhari on the authority of Ibn Abbas ﷺ. There is also another hadith recorded on the authority of 'A'ishah ﷺ with Ahmad and the Collectors of Sunan, that the husband of Barirah ﷺ was actually a free-man.

There are various reports regarding that, likewise, the people of knowledge have differed about the authenticity of the woman making a choice if the man is a free-man. The majority of the scholars are of the view that the chance for her to make a choice is not established, however it is said that she can call for cancelling the Nikah if they are compatible, (she probably might have been patient with him before been freed because she had no opportunity to do otherwise).

It was mentioned in some of the reports that the Prophet ﷺ actually told Barirah ﷺ: You are responsible for your decision; make your choice. The hadith thus indicates that there is no difference between whether the man is a slave or a freeman.

As for the statement that it is permissible to void a Nikah on the basis of fault (in one of the parties thereto), the proof for that is the hadith of Kab bin Zaid, or Zaid bin Kab ﷺ, that the Messenger of Allah ﷺ married a woman from the Clan of Ghifar, when he entered upon her and removed his cloth, and sat on the bed, he saw some whiteness in one of her flanks, he then stood up from the bed and said: 'Take your cloth.' He did not take back what he gave her as mahr. Ahmad, Said bin Mansur, Ibn Adiyy and Al-Bayhaqi recorded it. Kab bin Ujrah also reported it from the Messenger of Allah ﷺ as recorded by Al-Hakim in his Al-Mustadarak. Abu Nuaym also mentioned it in At-Tibb so also Al-Bayhaqi on the authority of Ibn Umar.

There are a lot of irreconcilable discrepancies with the hadith.

Malik recorded in Al-Muwata so also Al-Daraqutni and Said bin Mansur and

Al-Shafi'i and Ibn Abe Shaybah from Umar ﷺ that he said: 'Any woman who is sexually approached by a madman (in a legal Nikah) or a leper or a person with baras (another form of leprosy) has the right to her mahr due to what the man has tasted in her. But the man can have back the mahr he pays for whoever deceives him.' The men of the chain are authentic. There is another hadith recorded from Ali by Said bin Mansur in the chapter.

The majority of the scholars are of the view that a Nikah can be nullified due to discovery of fault (in any of the spouses), but they differ with respect to the explanation regarding the faults.

It was reposed from Ali, Umar and Ibn Abbas ﷺ that no woman can be sent back from her husband home except in the case of the faults mentioned, the fourth of which is any disease of the private part. Some of the scholars are of the view that a woman can be sent away due to any fault that can make one reject a slave girl in the slave market. This is the view supported by Ibn Al-Qayyim ﷺ. The view is also praised in Al-Hadyy, with respect to analogy of the rulings in transaction.

Some people of knowledge are also of the view that the woman too can reject a man due to the three diseases, and due to sexual deficiency and impotency. The difference of opinions regarding that is a long one.

As for the assertion that the marriage celebrated during the period of Jahiliyyah is valid when the parties to it accept Islam so far some of the requirements of the Shari'ah were met, the proof for that is the hadith of Ad-Dahak bin Fayruz from his father as recorded with Ahmad, the Collectors of Sunan, Al-Shafi'i, Al-Daraqutni, Al-Bayhaqi and graded as hasan by At-Tirmidhi and declared authentic by Ibn Hibban. Ad-Dahak said: I embraced Islam and there are two sisters under me as wives. The Messenger of Allah ﷺ then commanded me that I should divorce one of them.

Ahmad, Ibn Majah, At-Tirmidhi, Al-Shafi'i and Al-Hakim – who classified it as Sahih – recorded on the authority of Umar that he said: Al-Ghaylan Ath-Thaqafi embraced Islam and there were ten women under him whom he had married since the period of Jahiliyyah, all of them accepted Islam with him then the Messenger of Allah ﷺ commanded him to select four of them. The hadith has been said to be faulty. What is authentic therein is the statesmen of Umar as Al-Bukhari said.

As for the statement that when one of the spouses embraces Islam and the other does not that the Nikah between them becomes void and the woman must observe her Iddah, the proof for that is the hadith recorded on the authority of Ibn Abbas ﷺ and recorded by Al-Bukhari, he said: 'If a woman embraced Islam and migrated to the Muslims from unbelievers' land, she would not be proposed to until she menstruated and became pure. When she became pure,

she could then be proposed. If her husband (accepted Islam as well and) came to the Muslims before she got married she would go back to him.

Malik recorded in al-Muwata from Az-Zuhri that he said: We never heard that a woman would migrate to the Messenger of Allah ﷺ while her husband remained a Kafir in unbelievers' land except that the migration would separate between her and her husband unless the husband too came as a migrant before she finished her Iddah.

As for the assertion that whoever accepts Islam while his wife (who embraced Islam before him) has not remarried that they would be joined together over the existing Nikah even if the period between their acceptances of Islam were to be a very long one, if it is their choice. The proof for that is the hadith recorded on the authority of Ibn Abbas ﷺ and recorded with Ahmad and Abu Dawud while Al-Hakim graded it as authentic that the Messenger of Allah ﷺ sent back his daughter, Zaynab, to her husband, Abu Al-'As ibn al-Rabi', without any new Nikah. And that was after two years of separation. There was no new mahr between them. In the version of At-Tirmidhi, he said, There was no new Nikah between them. He said: This hadith is hasan, there is no problem with its chain.

As regards what At-Tirmidhi and Ibn Majah recorded on the authority of Ibn Amr ﷺ that the Prophet ﷺ returned Zaynab to Abul-Aas with a new mahr and a new Nikah, there is one Al-Hajjaj bin Artaah in the chain, he is a weak narrator. The hadith of Ibn Abbas ﷺ is more authentic as schools of hadith have clearly said.

A number of Companions are also of the view of the purport of the hadith of Ibn Abbas ﷺ; not as Ibn Abdil-Barr said that there is a consensus that the contract ceases after the Iddah. The hadith of Ibn Abbas ﷺ and all other Ahadith that have come upon its meaning should be held as specifying what has been reported that when the Iddah is completed the marriage contract is no more, that the woman is no longer lawful to her old husband except a new contract is made.

باب أحكام المهر

Chapter 8.3 Ruling on Dowry

Mahr



Al-mahr (dower) is obligatory and it is detested that there should be exorbitance regarding it. The mahr can be a metal ring or teaching the spouse the Qur'an. Whoever gets married to a woman and no mahr was mentioned to her, the woman will be entitled to the kind of mahr of her sisters (or other women of her category), that is when he has copulated with her. It is recommended that he gives her some mahr in advance before he enters upon her. He should be nice to her. She must always obey him. Whoever has two wives or above must be just between them regarding sharing (of time) and whatever is necessary. When he wants to go on a travel, he must cast a lot between them. A wife can give up her own time or enter into a form of understanding with the husband against her being divorced. When a man marries a new wife, he will remain with her for seven days, but if she is a previously-married woman, the man will stay with her for only three days. It is not permissible for the man to do azl (coitus interruptus) with his wives nor is it permissible to copulate with her from her anus.

Explanation:

I say: As for the mahr being obligatory this is because the Messenger of Allah ﷺ never did any Nikah without stipulating that the mahr must be paid. Allah the Almighty said in His Noble Book:

وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً

...and give to the women (whom you marry) their mahr (obligatory bridal money given by the husband to his wife at the time of marriage) with a good heart... [An-Nisa: 4].

He The Almighty also said:

وَآتَيْتُمْ إِحْدَاهُنَّ قِنطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا

...and you give any of them a Qintaar (a great amount of Mahr) take not the least bit of it back... [An-Nisa: 20].

He The Almighty also said:

كَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ

...and how could you take it (back) while you have gone in unto each other...? [An-Nisa: 21].

Allah the Almighty also said:

وَلَا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ

...and there will be no sin on you to marry them if you have paid their mahr to them... [Mumtahinah: 10].

Abu Dawud, An-Nasai and Al-Hakim – who classified it as Sahih – recorded on the authority of Ibn Abbas ﷺ that the Prophet ﷺ forbade Ali ﷺ from copulating with Fatimah ﷺ until he had given her something (as mahr). When Ali ﷺ said: I have nothing. The Messenger of Allah ﷺ said: Where is your coat of arm? Give it to her.

Another proof is the hadith of Sahl Ibn Sad ﷺ that will be mentioned shortly; it is one of the greatest proofs for the obligation of the mahr.

As for the prohibition that the mahr should not being exorbitant, the proof for that is the is the hadith of 'A'ishah ﷺ which was recorded by At-Tabarani in Al-Awsat that the Messenger of Allah ﷺ said:

إِنَّ أعظَمَ النّكاحِ بَرَكَةً أَيسَرُه مُؤْنَةً

The most blessed Nikah is the one with most affordable mahr.

The hadith has some weakness in its chain.

However in Sahih Muslim on the authority of Abu Hurairah ﷺ who said, A man came to the Prophet ﷺ and said: I have got married to a woman among the Ansar. The Prophet ﷺ asked him: Have you looked at her because the Ansar women have a peculiar thing in their eyes. The man replied in the affirmative. The Messenger of Allah ﷺ asked him: How much did you give her as mahr? The man replied: Four ounces (of silver). Then the Prophet ﷺ told him: Four ounces! As if you carve silver from the side of this mountain. We do not have what we will give you, perhaps we will send you an expedition where you will have some wealth. The Messenger of Allah ﷺ then sent an expedition to the Clan of Abs and that man was sent with them.

Abu Dawud and Al-Hakim, who classified it as Sahih, recorded on the authority of Uqbah bin Aamir ﷺ who said the Messenger of Allah ﷺ said:

خَيْرُ الصدَاقِ أَيْسَرُهُ

The best of dower is the most affordable one.

'A'ishah ﷺ said the dower given by the Messenger of Allah ﷺ to his wives were twelve ounces (of sliver) and a nash. A nash is half of a ounce. The hadith is recorded in Sahih Muslim and some other books.

As for the statement that the mahr can be as simple as a ring or teaching the woman some chapters of the Qur'an, the proof for that is what Ahmad, Ibn Majah and At-Tirmidhi – who classified it as Sahih – recorded on the authority of Aamir Ibn Rabiah that a woman from the Clan of Fazazah was married with a pair of sandals as the mahr, the Messenger of Allah ﷺ then said: Are you pleased with this pair of sandals as your wealth? The woman replied in the affirmative saying, 'Yes' The Prophet ﷺ then authorized it.

Ahmad and Abu Dawud also recorded on the authority of Jabir ﷺ that the Messenger of Allah ﷺ said:

لَو أَنَّ رجُلاً أعْطَى امْرَأَةً صَدَاقاً مِلْءَ يَدَيْهِ طَعَاماً كَانَتْ لَه حَلالاً

If a man were to give a handful of food to a woman as her mahr, it makes her lawful to him.

Meanwhile the hadith has some weakness.

Al-Daraqutni recorded on the authority of Abu Sa'id ﷺ about the mahr that [the Messenger of Allah ﷺ said]:

وَلَوْعَلَى سِوَاكٍ مِنْ أَرَاك

Even if it were to be upon a chewing-stick from the Araq Tree.

And in the Sahihayn and some other books in the hadith of Sahl bin Sad that a woman came to the Prophet ﷺ and said: O Messenger of Allah, I present myself to you. She stood for a long period, and then a man stood and said: O Messenger of Allah, marry her to me if you don't have interest in her. The Messenger of Allah ﷺ then said: Do you have anything with which you can marry her? The man replied: I have nothing except this loin-cloth. The Prophet ﷺ said: If you were to give her your loin-cloth, you will stay without any, get her something else The man said: I couldn't find anything. The Prophet ﷺ said to him again: get something for her even if it is a metal ring. The man went again and he could not get anything. The Prophet ﷺ then said: What have you memorized from the Qur'an? The man replied he had memorized such-and-such chapters; he mentioned the chapters. The Prophet ﷺ said to him:

قَد زَوَّجْتُكَها بِمَا مَعَكَ مِنَ القُرْآنِ

I marry her to you with what you possess of the Qur'an.

What has been reported above is not in conflict with the following Ahadith:

لا مَهْرَ أَقَلَّ مِن عَشَرَةِ دَرَاهِمَ

A mahr less than ten dirham is not valid.

The hadith can be found with Al-Daraqutni on the authority of Jabir ﷺ. But it contains some weakness due to the presence of Mubashshir bin Ubayd and Hajjaj bin Artaah in the chain. They are both weak narrators.

As for the assertion that whoever marries a woman and no mahr is mentioned to her, that the woman will be entitled to the mahr of her sisters or other wives, the proof for that is the hadith recorded on the authority of Alqamah ﷺ as found with Ahmad and the Collectors of Sunan, so also Al-Hakim and Al-Bayhaqi. At-Tirmidhi and Ibn Hibban graded it to be authentic. He (Alqamah) said: Abdullah bin Masud ﷺ was approached regarding a woman who was married and whose husband died thereafter with no mahr stated for her, and the man had not copulated with her. He ﷺ said: I opine that she is entitled to the like of what other women take, and she is also entitled to the inheritance, and she must observe the Iddah. Thereafter Maqil bin Sinan Al-Ashjai testified that the Prophet ﷺ gave the same ruling in the matter of Barwa the daughter of Washiq.

As for the statement that it is recommended that something should be given of the mahr before there could be copulation, the proof for that is the hadith of Ibn Abbas ﷺ that was shortly mentioned.

As for the hadith recorded by Abu Dawud and Ibn Majah on the authority of 'A'ishah ﷺ that she said: The Messenger of Allah ﷺ commanded me to prepare a woman for her husband before he gave her any mahr,' There is no confliction between this hadith and that of Ibn Abbas ﷺ. The hadith of Ibn Abbas ﷺ indicates that something should be given in advance as mahr before there is copulation, and the fact that it is not obligatory to do that does not negate its being recommendable.

As for the requirement that the man should be nice to his wife, the proof for that is the Word of Allah the Almighty:

وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ

...and you should treat them with goodness... [An-Nisa: 19].

It is also mentioned in the Sahihayn and some other books on the authority of Abu Hurairah ﷺ [that the Messenger of Allah ﷺ said]:

أَنَّ المَرْأَةَ كَالضِّلْعِ إذا ذَهَبْتَ تُقِيمُها كَسرتَها وإنْ تَرَكْتَها اسْتَمْتَعْتَ بِهَا عَلى عِوَجٍ فاسْتَوصُوا بالنِّسَاء

A woman is like a bent rib, if you try to straighten it you will break it, and if you were to leave it as it is, you will have to enjoy her upon her crookedness; so take good care of women.

Ahmad and At-Tirmidhi – which he classified as authentic – recorded also on the authority of Abu Hurairah ﷺ that the Messenger of Allah ﷺ said:

أَكْمَلُ المُؤْمِنِينَ إِيْمَاناً أَحْسَنُهُم خُلُقاً وخِيارُكُم خِيارُكُم لِنِسَائِهِم

The best of the believers in faith are those who are best in character; and the best of you are those best to their wives.

At-Tirmidhi also recorded on the authority of 'A'ishah ﷺ who said, the Messenger of Allah ﷺ said:

خَيْرُكُمْ خَيْرُكُمْ لأَهْلِهِ وأَنَا خَيْرُكُمْ لأَهْلِي

The best among you are those who are good to their wives. I am the best among you to his family.

As for the fact that the woman must obey her husband, the proof for that is the Word of Allah the Might;

فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا

...but if they return to obedience, seek not against them means (of annoyance)... [An-Nisa: 34].

Also on the authority of Abu Hurairah ﷺ, as recorded in the Sahihayn and some other books that the Messenger of Allah ﷺ said:

إِذَا دَعا الرَّجُلُ امْرأَتَهُ إِلى فِرَاشِهِ فأَبَتْ أَنْ تَجِيءَ فَبَاتَ غَضْبَانَ عَلَيْها لَعَنَتْها المَلائِكَةُ حتَّى تُصْبِحَ

When a man invites his woman to his bed and she refuses to answer him till he goes to sleep in anger, the angels will curse the woman until morning.

The Collectors of Sunan recorded a hadith on the authority of Amr Ibn Al-Ahwas ﷺ, and classified Sahih by At-Tirmidhi, that he witnessed the Farewell Pilgrimage with the Prophet wherein he ﷺ praised Allah and extolled Him then gave the admonition as thus:

استَوْصُوا بالنِّسَاءِ خَيراً فإِنَّمَا هُنَّ عِندَكُم عَوَانٍ لَستُم تَمْلِكُونَ مِنهُنَّ شَيئاً غيرَ ذَلِكَ إِلَّا أَنْ يَأْتِينَ بفَاحِشَةٍ مُبَيِّنَةٍ فإِنْ فَعَلْنَ فاهْجُرُوهُنَّ في المضَاجِعِ واضْرِبُوهُنَّ ضَرْباً غَيْرَ مُبَرِّحٍ فإِنْ أَطَعْنَكم فَلا تَبْغُوا عَلَيْهِنَّ سَبِيلا إِنَّ لكُم من نِسَائِكُم حَقًّا ولِنِسَائِكُم عَلَيْكُم حَقّ فأَمَّا حَقُّكُم عَلَى نِسَائِكُم فَلَا يُوطِئْنَ فُرُشَكُم مَنْ تكرَهُونَ وَلَا يَأْذَنَّ في بُيُوتِكُمْ لِمَنْ تَكرَهُونَ أَلَا وَحَقُّهُنَّ عَلَيْكُمْ أَنْ تُحْسِنُوا إِلَيْهِنَّ في كِسْوَتِهِنَّ وَطَعَامِهِنَّ

Take good care of women, they are like bondswomen with you. You own nothing with regards to them except they come with a clear sin, if they do so, desert their bed, and beat them lightly if they stop not. But if they obey you, you should not transgress against them. You have right regarding your wife and they have right regarding you. Your right upon them is that they should not allow anyone you hate sit on your bed, and that they should not allow anyone you hate enter your

house. As for their right upon you, that you should be nice to them regarding clothing and feeding.

There are several other Ahadith on the matter.

As for being just between the co-wives regarding sharing time with them and other necessary things, the proof for that is the hadith of Abu Hurairah ﷺ recorded by Ahmad, the Collectors of Sunan, Ad-Darimi, Ibn Hibban and Al-Hakim, who said its chain is upon the standards of Al-Bukhari and Muslim; At-Tirmidhi classified the hadith to be authentic; that the Prophet ﷺ said:

مَنْ كَانَت لَه امْرَأَتَانِ يَمِيلُ لإِحْدَاهُمَا عَلى الأُخْرَى جَاءَ يَومَ القِيَامةِ أَحَدَ شِقَّيهِ سَاقِطاً أَو مَائِلاً

Whoever has two wives and tends towards one of them at the expense of the other will come on the Day of Resurrection with a falling or slanting flank.

The Messenger of Allah ﷺ used to share his time between his wives. The companions would gather in the house of the woman who would have the night. This is how it is recorded in the Sahih.

The Collectors of Sunan, Ibn Hibban and Al-Hakim – who classified it as Sahih – recorded on the authority of 'A'ishah ﷺ who said: The Messenger of Allah ﷺ used to share his time and would be just, he would say:

اللَّهُمَّ هَذَا قَسْمِي فِيمَا أَمْلِكُ فلا تَلُمْنِي فِيمَا تَمْلِكُ ولا أَمْلِكُ

Allahumma hadha qismi fi ma amlik fala talumni fi ma tamliku wa la amlik.

O Allah! This is what I can share in what I have the power to; do not blame me for what You posses and I do not possess.

As for casting lot between them when wanting to go on a journey, the proof for that is the hadith of 'A'ishah ﷺ as recorded in the Sahihayn and some other works that the Prophet ﷺ was such that whenever he intended to go on a journey, he would cast a lot between his wives. Whoever's lot appeared would go with him.

As for the statement that a wife can relinquish her time for a co-wife, or she

does that to enter into an agreement with the husband, the proof for that is the hadith of 'A'ishah ﴿ﷺ﴾ recorded in the Sahihayn and some other works that Saudah bint Zamah ﴿ﷺ﴾ gave her days (due to her from the Messenger of Allah ﴿ﷺ﴾ to 'A'ishah ﴿ﷺ﴾, thus the Prophet used to spend her days and those of 'A'ishah ﴿ﷺ﴾.

Also it is recorded in the Sahihayn on her authority while stating the meaning of this Word of Allah:

فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ

...there is no sin on them both if they make terms of peace between themselves; and making peace is better... [An-Nisa: 128].

'A'ishah ﴿ﷺ﴾ said: This is with respect to a woman under a man whom he does not have much enjoyment from, consequently he decides to divorce her and marry someone else in her place, the woman then asks him not to divorce her, rather that he should marry another woman while she absolves him of spending on, and copulating with her.

As for the statement that he would stay with a newly-married wife for seven days, and if a previously-married woman, three days, the proof for that is the hadith of Umm Salamah – in Sahih Muslim and some other works – that the Prophet ﴿ﷺ﴾ - stayed with her for three days after he married her. It is also recorded in the Sahihayn in the hadith of Anas that he ﴿ﷺ﴾ said:

مِنَ السُّنَّةِ إِذَا تَزَوَّجَ البِكْرَ عَلَى الثَّيِّبِ أَقَامَ عِنْدَهَا سَبْعاً ثُمَّ قَسَمَ وإِذَا تزَوَّجَ الثَّيِّبَ أَقَامَ عِنْدَها ثَلاثاً ثُمَّ قَسَمَ

It is from the Sunnah that when a man added a virgin to his wives, he stays with her for seven days after which he will begin to share his time (equally between all). But if it were a previously-married woman, he would stay with her for three days then he would begin to share his time.

There are several other Ahadith in the section.

As for the statement that it is not permissible to do 'azl (coitus interruptus) with the wife, the proof for that is the hadith of Judhamah bint Wahb Al-Asadiyyah that they asked the Messenger of Allah ﴿ﷺ﴾ regarding azl and he ﴿ﷺ﴾ said:

ذَلِكَ الوَأْدُ الخَفِيُّ

That is a hidden form of infanticide.

Muslim and other collectors recorded the hadith.

Ahmad and Ibn Majah also recorded on the authority of Umar ﷺ that he said: The Messenger of Allah ﷺ forbade azl done with a freewoman except her consent is sought. Ibn Laiah is in the chain; there is an ill comment against him.

Abdul Razzaq and Al-Bayhaqi also rescored in the hadith of Ibn Abbas ﷺ that he said, Azl is prohibited with regard to a free woman except her consent is sought.

Those who hold 'azl to be permissible have cited the hadith of Jabir ﷺ found in Sahih Muslim and some other works as a proof. He ﷺ said:

كُنَّا نَعْزِلُ عَلَى عَهْدِ رَسُولِ اللَّه صَلَّى اللَّه عَلَيْهِ وآلِهِ وسَلَّم والقُرآنُ يَنْزِلُ

We used to do 'azl in the time of the Messenger of Allah ﷺ while the Qur'an was being revealed.

In a narration, it was mentioned that the Messenger of Allah ﷺ heard about that and he did not forbid them from doing it. Meanwhile, we will say Jabir ﷺ was not aware of the prohibition but others were.

As for what is recorded in the Sahihayn in the hadith of Abu Sa'id ﷺ that the Prophet ﷺ was asked about azl and he said:

ما علَيكُمُ أنْ لا تَفْعَلُوا فإنَّ اللَّهَ عزَّ وجَلَّ قَد كَتَبَ مَا هُوَ خَالِقٌ إلَى يَومِ القِيَامَةِ

It is not upon you that you abstain from it. Indeed Allah has decreed what He wanted to create until the Day of Resurrection.

It was said that the meaning of the hadith is a prohibition from the act. Others say the meaning is that, it is not obligatory upon you that you stop the act.

The hadith therefore can be interpreted in various ways; it will be very difficult to use it as a proof for one of the perspectives.

Ahmad, At-Tirmidhi and An-Nasai recorded with an authentic chain that the Messenger of Allah ﷺ said about azl:

أَنتَ تَخْلُقُهُ أَنْتَ تَرْزُقُهُ أَقِرَّهُ قَرَارَهُ فَإِنَّمَا ذلكَ القَدَرُ

Did you create it (that is, the sperm)? Do you provide for it? Let it be, that is the predestination.

Ahmad and Muslim also recorded on the authority of Usamah bin Zaid ﷺ that a man came to the Prophet ﷺ and said: I do azl with my wife. The Messenger of Allah ﷺ said: Why do you do that? The man replied: I pity her baby.' Then the Messenger of Allah ﷺ said:

لَوْكَانَ ضَارًّا ضَرَّ فارِسَ والرُّومَ

Had it been harmful, it would have harmed the Persians and Romans.

Ibn Abdil-Barr was reported to have said there is a consensus that azl cannot be done with respect to freewoman except her consent is sought. That Ijma is made defective by a statement credited to Al-Shafi'i School of Thought that he said, Woman has no right with respect to (the decision made regarding) sexual relations.

As for the assertion that it is not permissible for a man to copulate with his wife in her anus, the proof for that is the hadith of Abu Hurairah ﷺ recorded with Ahmad, the Collectors of Sunan and Al-Bazzar that the Messenger of Allah ﷺ said:

مَلْعُونٌ مَن أَتَى المَرْأَةَ فِي دُبُرِهَا

Cursed is the man who approaches his wife in her anus.

There is one Al-Haarith bin Mukhallad whose state of trustworthiness is not known.

Ahmad, At-Tirmidhi and Abu Dawud recorded on the authority of Abu Hurairah ﷺ that the Messenger of Allah ﷺ said:

مَنْ أَتَى حَائِضاً أَو امْرَأَةً فِي دُبُرِها أَو كَاهِناً فَصَدَّقَهُ فَقَد كَفَرَ بِما أُنْزِلَ عَلى مُحَمَّدٍ

Whoever approaches a woman in her menstrual period, or approaches a woman in her anus, or approaches a soothsayer and believes in what he says, such has disbelieved in what was revealed to Muhammad.

There is one Abu Tamimah in the chain. Al-Bukhari said about him: It is not known that Abu Tamimah heard narrations from Abu Hurairah. Al-Bazzar said: This hadith is a munkar; there is Hakim bin Al-Athram in the chain; he is not reliable, any report he singly reports is not to be considered.

Ahmad and Ibn Majah also recorded on the authority of Khuzaymah bin Thabit that the Prophet ﷺ forbade a man to approach his wife in her anus. There is Umar bin Huhayhah in the chain; he is unknown too.

Meanwhile, Ali bin Abi Talib, as recorded by Ahmad, At-Tirmidhi and Ibn Majah, reported from the Messenger of Allah ﷺ as thus:

لَا تَأْتُوا النِّسَاءَ فِي أَعْجَازِهِنَّ

Do not approach women in their rumps.

Or that he ﷺ said, in their anuses.

The men of the chain are trustworthy.

Also Amr bin Shuayb reported from his father, who reported from his father as well, as recorded by Ahmad and An-Nasai, that the Prophet said: Whoever approaches his wife in her anus is guilty of a little form of sodomy.

الذِي يَأْتِي امْرَأَتَه فِي دُبُرِهَا هِيَ اللُّوطِيَّةُ الصُّغْرَى

Whoever approaches his wife in her anus is guilty of a little form of sodomy.

The section therefore contains Ahadith that support one another such that it could be said that it is established from the Messenger of Allah ﷺ.

Meanwhile, it is recorded from some people of knowledge that the act is permissible; they cite this Word of Allah as a proof:

نِسَاؤُكُمْ حَرْثٌ لَكُمْ فَأْتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ

Your wives are a tilth for you, so go to your tilth as you wish... [Al-Baqarah: 223].

The matter is a long one; the discussion here may not allow further elaboration.

باب الوَلَدُ للفِرَاش

Chapter 8.4 Establishing Fatherhood



The child is for the owner of the matrimonial bed, and there is no consideration to the fact that the child resembles other than the owner of the matrimonial bed. When three persons partake in impregnating a woman, each when the woman is in her pure state and has a claim over her at the time (that is, she being his legal wife). If the woman gives birth to a baby and all of them lay claim to the baby, there will be casting of lot between them, whoever's lot appears takes the child while the other two takes two-third of the Diyyah.

Explanation:

I say: As for the assertion that the disputed baby is for the owner of the matrimonial bed, and that no consideration will be given to the fact that the child resembles other than the owner of the matrimonial bed, the proof for that is the hadith of Abu Hurairah ﷺ as recorded in the Sahihayn and some other works that the Messenger of Allah ﷺ said:

الْوَلَدُ لِلْفِرَاشِ، وَلِلْعَاهِرِ الْحَجَرُ

The child is for the owner of the bed while the adulterer is to be stoned.

There is also in the Sahihayn on the authority of 'A'ishah ﷺ who said: Sad Ibn Waqqas and Abd bin Zamah raised a dispute to the Messenger of Allah ﷺ. Sad said: O Messenger of Allah, he (the child upon which they disputed) is my brother's son, Utbah bin Abi Waqqas, as he told me, look at the resemblance. Abd bin Zamah said: O Messenger of Allah, he is my brother; he was given birth to on my father's matrimonial bed. The Messenger of Allah ﷺ looked at the baby and could see the resemblance between him and Utbah but said: The child is for you, O Abd bin Zamah; the child is for the owner of the bed while stoning is for the adulterer, but you Saudah bint Zamah cover yourself from him.

As for the statement that if three persons (legally) lay claim to a child, the evidence clarifying that is the hadith recorded by Ahmad, Abu Dawud, Ibn Majah and An-Nasai in the hadith of Zaid bin Arqam who said: Three persons were brought to Ali ﷺ in Yemen; they had all had met with the same woman

in one purity. He asked from two of them, Do you agree this is the owner of the kid? They replied in the negative. He asked the other two the same question, the answer was the same. Then he cast a lot between them and the kid was attributed to the person whose lot appeared, and two-third of Diyyah was placed on him. The incident was later reported to the Messenger of Allah ﷺ who smiled at it until his molars were seen.

An-Nasai and Abu Dawud reported the incident as a mawquf of Ali with a chain better than the first one. The chain of the first one contains one Yahya bin Abdillah Al-Kindi who was well-known as Al-Ajlah, Ibn Main and Al-Ajli held him to be trustworthy but An-Nasai held him to be weak, though the points of An-Nasai are not tenable.

It is the view of Malik, Al-Shafi'i, Ahmad and the majority of the scholars that casting lot, in a case like this, is what is necessary. That was how Ibn Raslan reported it from them in the Book of Manumission in Sharh As-Sunan. This is one of the cases where it is permissible to make use of lot casting.

9 كتاب الطَّلاق
Book of Divorce
At-Talaq

باب أحكام الطلاق
Chapter 9.1 Rulings on Divorce

Divorce is permissible from a religiously responsible adult; it takes effect even at joke, it takes effect for a woman in her purity state wherein she has not been copulated. The man cannot divorce the woman in the menstrual period before the purity, or during a clear pregnancy. It is prohibited that the divorce takes place in other than this format. That divorce will be considered to have taken place at more than one pronouncement without any revocation (in between), scholars differed upon it. The clearest of the views is that there is no divorce.

Explanation:

I say: As for the permissibility of divorce, the Noble Book of Allah clearly states that, so also are the various narrations from the Pure Sunnah and the consensus of the scholars of the Ummah. This fact is one of the undeniable matters of the Shari'ah. But it is discouraged that there should be divorce when there is no reason for it.

Ahmad, Abu Dawud, Ibn Majah and At-Tirmidhi – who classified it as hasan – recorded on the authority of Thawban ﷺ who said the Messenger of Allah ﷺ said:

أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوجَها الطلاقَ في غَيْرِ ما بَأْسٍ فحَرَامٌ عَلَيْهَا رائِحَةُ الجَنَّةِ

Whichever woman asks her husband for a divorce with no reason will have the scent of Jannah prohibited for her.

As for the statement that it must come from an adult who is religiously responsible, this is because the affair of the minor is always in the hands of his guardian, and any divorce that emanates from a compelled person is invalid. Proofs for these two issues are well stated in their respective places.

As for the assertion that the pronouncement of divorce takes effect with joke, the proof for that is the hadith of Abu Hurairah ﷺ recorded by Ahmad, Abu Dawud, Ibn Majah, At-Tirmidhi – who classified it as hasan – and Al-Hakim – who held it to be sahih – that the Messenger of Allah ﷺ said:

ثَلاثٌ جِدُّهُنَّ جِدٌّ وَهَزْلُهُنَّ جِدٌّ : النِّكَاحُ والطَّلاقُ وَالرَّجْعَةُ

Three matters, joking with them is as being serious with them: Nikah, divorce and taking back a partially divorced wife.

There is one AbdurRahman bin Habib bin Azdak in the chain; there is a difference of opinions about him among the scholars of hadith.

Under this section, there is another hadith on the authority of Fadalah bin Ubayd ﷺ recorded by At-Tabarani, linked to the Messenger of Allah ﷺ that he ﷺ said:

ثَلاثٌ لا يَجُوزُ فِيهِنَّ اللَّعْبُ الطَّلاقُ والنِّكاحُ والعِتْقُ

There are three matters joking with them is not permissible: divorce, Nikah and manumission.

There is Ibn Laiah in the chain!

And on the authority of Ubadah bin As-Samit ﷺ recorded with Al-Harith bin Usamah in his musnad linked to the Messenger of Allah ﷺ, the like of the aforementioned hadith but with an addition:

فَمَنْ قَالَهُنَّ فَقَد وَجَبْنَ

Whoever pronounces them will have them binding on him.

Meanwhile there is a disconnection in the chain of that hadith.

But Abdul Razzaq recorded on the authority of Abu Dhar ﷺ back to the Messenger of Allah ﷺ that he ﷺ said:

مَنْ طَلَّقَ وهُوَ لَاعِبٌ فَطَلاقُهُ جَائِزٌ وَمَنْ أَعْتَقَ وهُوَ لَاعِبٌ فَعِتْقُهُ جَائِزٌ وَمَنْ نَكَحَ وهُوَ لَاعِبٌ فنِكَاحُهُ جَائِزٌ

Whoever divorces (a woman) while joking, that pronouncement takes effect, and whoever manumits a slave jokingly, the pronouncement takes effect, and whoever asks for a woman's hand in marriage jokingly, his pronouncement takes effect.

There is a disconnection in the chain too.

Also there is another narration linked to Ali ﷺ as recorded by Abdul Razzaq also. And there is another one on the authority of Umar ﷺ back to the Messenger of Allah ﷺ [on the issue]. All the Ahadith give support to one another.

As for the assertion that the pronouncement of divorce should take place in the woman's pure state (when she is not in her menstrual period) and not had been copulated with, the proof for that is the hadith of Ibn Umar ﷺ recorded with Muslim and the Collectors of Sunan, so also Ahmad, that Ibn Umar divorced his wife in her menstrual period, so his father mentioned that to the Prophet ﷺ who then said:

مُرْهُ فَلْيُرَاجِعْهَا ثُمَّ لِيُطَلِّقْهَا طَاهِراً أوحَامِلاً

Command him to take her back; he should divorce her either when she is her pure state or when she is pregnant.

In another version, he ﷺ said:

لِيُرَاجِعْهَا ، ثُمَّ يُمْسِكْهَا حَتَّى تَطْهُرَ ، ثُمَّ تَحِيضَ فَتَطْهُرَ ، فَإِنْ بَدَا لَهُ أَنْ يُطَلِّقَهَا ، فَلْيُطَلِّقْهَا قَبْلَ أَنْ يَمَسَّهَا ، فَتِلْكَ الْعِدَّةُ كَمَا أَمَرَ اللَّهُ

He should take her back until she becomes pure from her menstrual period, and be allowed to observe another hayd and becomes pure, then if it appears to him that he divorces her, he should divorce her before copulating with her. That is the counting as Allah has commanded.

The hadith is in the Sahihayn and some other works.

In the Sahih, there is this version that the Prophet ﷺ recited this Verse:

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ

O Prophet! When you divorce women, divorce them at their Iddah (prescribed periods... [At-Talaq: 1].

The hadith contains different kinds of wordings. The difference of opinions between the reporters of the hadith is whether the pronouncement altogether was considered a (complete) divorce or not. The report that says it was not counted as a divorce is clearer. I have talked about this matter in Sharh Muntaqa, and in another specific work. The difference of opinion is a long one while the proofs are various but what is more correct is that such an innovated act (that is, pronouncement of divorce while the woman is in her mental period) does not take effect due to what we have mentioned in the aforementioned books.

Said bin Mansur recorded in the route of Abdullah bin Malik on the authority of Ibn Umar ﷺ that the he divorced his woman while she was in her menstrual period then the Messenger of Allah ﷺ said, That is nothing.

Ibn Hazm ﷺ recorded too in Al-Muhala with a connected chain linking it back to Ibn Umar ﷺ that he said something about a man who divorced his wife while she is in her menstrual period; that it should not be considered. The chain of this hadith is sahih.

Four other reporters support the report of Abu Az-Zubayr – who reported the

view that there is no divorce -. Abdullah bin Umar Al-Umari, Muhammad bin AbdilAziz Abu Rawwad, Yahya bin Sulaym, and Ibrahim bin Abi Hasanah.

Even if there is no other proof except the Word of Allah the Almighty:

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ

O Prophet! When you divorce women, divorce them at their Iddah (prescribed periods... [At-Talaq: 1].

Then that will suffice.

It is an established principle (in jurisprudence) that a commandment towards a matter is a prohibition of its opposite. And when there is a prohibition that implies that, what is prohibited is void. Allah the Almighty said:

فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ

...after that, either you retain her on reasonable terms or release her with kindness... [Al-Baqarah: 229].

Whoever divorces a woman upon other than what Allah the Almighty has commanded such has not released the woman with kindness.

A number of scholars of the Salaf are of the view that the divorce does not take effect; such as Al-Baqir, As-Sadiq, Ibn Ulayyah. That is also the view of Ibn Hazm and Ibn Taymiyyah ﷺ.

The majority of the scholars are of the view that the divorce is effective.

As for the assertion that pronouncing the divorce three times at a go, majority of the scholars are of the view that it takes effect and that pronouncements can be said together (without necessarily performing the Iddah of the first). But some groups from the people of knowledge are of the view that a pronouncement cannot follow another immediately rather they should be counted only one. That is the view of people like Abu Musa, Ibn Abbas, Tawus, Ata, Jabir bin Zaid, Al-Hadi, Al-Qasim, An-Nasir, Al-Baqir, Ahmad bin Isa, and Abdullah bin Musa ﷺ.

There is a report from Ali (to that effect) ﷺ so also from Zaid bin Ali. That is also the view of Ibn Taymiyyah and Ibn Al-Qayyim ﷺ. That is what Ibn Mughith wrote in Al-Wathaiq on the authority of Ali, Ibn Mas'ud, AbdurRahman bin Awf and Az-Zubayr. He also mentioned that is the view of a number of the people of knowledge in Cordoba. That is also what Ibn Mundhiri recorded from the Companions of Ibn Abbas ﷺ.

The majority of the scholars made evidence with the hadith of Rukanah bin Abdillah ﷺ that he divorced his wife, Suhaymah, he then informed the Prophet ﷺ of what transpired and that he only intended to pronounce it once. The Prophet ﷺ said: By Allah you did not intend but only a pronouncement? The man responded: By Allah I did not intend but only a pronouncement. The woman was then returned to him.[23] Al-Shafi'i, Abu Dawud and At-Tirmidhi recorded it; Abu Dawud held it to be authentic so also Ibn Hibban and Al-Hakim. There is one Az-Zubayr bin Said Al-Hashimi in the chain, more than one scholars of hadith have declared him to be weak. It was said that he was an abandoned narrator.

The proofs have come that pronouncement of divorce be said together; but none of such proofs can be found in the Sahih. However, a clearer report on the issue has come from the hadith of Ibn Abbas ﷺ in Sahih Muslim that he said: Divorce in the time of the Messenger of Allah ﷺ, Abu Bakr and the beginning of the reign of Umar ﷺ three pronouncements used to be considered one, but when people were very loose with the issue, Umar ﷺ later made it be on them.

23 The point they made from this hadith is that had the man intended divorce the Prophet ﷺ wouldnt have returned his wife her to him and that was why he ﷺ made him swear. And so far most people who make these pronouncements really intend divorce, it is therefore considered divorce. (Editor)

باب بما يقَع الطَّلاق

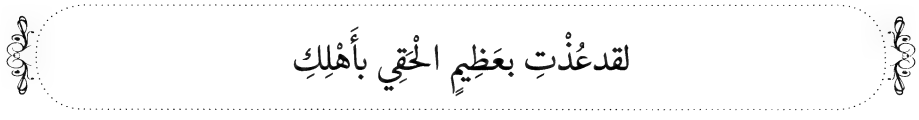
Chapter 9.2 Expressing a Divorce and Take-Back



Divorce can be expressed implicitly but upon the intention that he really wants to divorce her. And he can throw the choice to the woman; if she chooses a separation then it takes effect. The husband can also ask a third party to communicate the divorce to her, and it will be valid. Divorce does not occur in case of forbiddance. The man has right as to taking back his wife while she is in the Iddah of the divorce; he can take her back whenever he wishes, that is, in a revocable divorce. But the woman will be forbidden to him after three (different and distinct) pronouncements have been made; until she marries another man.

Explanation:

I say: As for the assertion that divorce can occur implicitly, the proof for that is the hadith of 'A'ishah ﴿ﷺ﴾ as recorded with Al-Bukhari and some others that the daughter of Al-Jawn was brought to the Messenger of Allah ﴿ﷺ﴾ after their Nikah and she said, I seek refuge in Allah from you. The Messenger of Allah ﴿ﷺ﴾ replied,



You have sought refuge in The Almighty Lord; get back to your family.

In the hadith of matter of stay-behind of Kab bin Malik - from the Battle of Tabuk -, as recorded in the Sahihayn and some others; when it was communicated to him that the Messenger of Allah ﴿ﷺ﴾ commanded him to stay away from his wife. He asked whether he should divorce her, or what exactly should he do. He was just told to stay away from her by not getting close to her. So he went and told his wife, Go back to your people. It is understood from the two hadith is that this statement Go back to your family can mean a divorce with intention and may not mean it if not intended.

As for the assertion that divorce can take place by the man asking his wife to make a choice, the proof for that is the Word of Allah the Almighty:

يَا أَيُّهَا النَّبِيُّ قُلْ لِأَزْوَاجِكَ إِنْ كُنْتُنَّ تُرِدْنَ الْحَيَاةَ الدُّنْيَا وَزِينَتَهَا فَتَعَالَيْنَ أُمَتِّعْكُنَّ وَأُسَرِّحْكُنَّ سَرَاحًا جَمِيلًا

O Prophet! Say to your wives: if you desire the life of this world and its glitter, then come! I will make a provision for you and set you free in a handsome manner (divorce). [Al-Ahzab: 28].

وَإِنْ كُنْتُنَّ تُرِدْنَ اللَّهَ وَرَسُولَهُ وَالدَّارَ الْآخِرَةَ فَإِنَّ اللَّهَ أَعَدَّ لِلْمُحْسِنَاتِ مِنْكُنَّ أَجْرًا عَظِيمًا

But if you desire Allah and His Messenger, and the home of the Hereafter, then verily, Allah has prepared for good doers amongst you an enormous reward. [Al-Ahzab: 29].

It has been established in the Sahihayn and some other books that when the Verses were revealed, and the Mothers of the believers were asked to make a choice, the Messenger of Allah ﷺ called his wives and asked them to make a choice. It was also established in the Sahihayn and some other books that 'A'ishah رضي الله عنها said:

خَيَّرَنَا رسولُ اللَّهِ صلَّى اللَّه عَلَيْه وسلَّم فاخْتَرْنَاه فَلَمْ يَعُدَّهَا شَيْئاً

The Messenger of Allah ﷺ asked us to make a choice but we chose him; so he ﷺ did not count it (being asked to make a choice) as anything (that is, as any divorce).

There is a difference of opinion over the matter but this is the truth and that is the view of the majority of the scholars.

As for the assertion that when a man sends a third party to communicate his notice of divorce to his wife it is valid, this is because such will be regarded as an agent that makes an intention occur. It is established (as a principle) that agency is permissible whether with respect to divorce or other matters. Nothing will exempt divorce from it except a specifying proof.

Abu Hurairah, Ibn Abbas and Amr bin Al-Aas رضي الله عنهم were asked regarding a

man who placed the affair of his wife in the hands of his father. They said any divorce from that takes effect, as recorded by Abu Bakr Al-Barqani in his work on Sahihayn.

As for the assertion that there is no divorce when a man forbids his wife upon himself, this is due to the proof in the Sahihayn on the authority of Ibn Abbas ﴿ﷺ﴾ that he said: When a man forbids his wife upon himself, he will only expiate for he oath; indeed there is the best example for you in the Messenger of Allah ﴿ﷺ﴾.

An-Nasai also recorded on his authority that a man came to him and said: I have forbidden my wife upon myself. He ﴿ﷺ﴾ said: You have lied; she is not forbidden upon you. Then he recited this Verse:

يَا أَيُّهَا النَّبِيُّ لِمَ تُحَرِّمُ مَا أَحَلَّ اللَّهُ لَكَ

O Prophet! Why do you ban (for yourself) that which Allah has made lawful to you?... [At-Tahrim: 1].

But Ibn Abbas ﴿ﷺ﴾ told the man that he would have to make the severest of expiation which was manumitting a slave.

An-Nasai also recorded with an authentic chain on the authority of Anas that the Messenger of Allah ﴿ﷺ﴾ had a female slave whom he used to copulate with. 'A'ishah and Hafsah ﴿ﷺ﴾ did not let him be until he forbade the woman upon himself, then Allah revealed the Verse:

يَا أَيُّهَا النَّبِيُّ لِمَ تُحَرِّمُ مَا أَحَلَّ اللَّهُ لَكَ

O Prophet! Why do you ban (for yourself) that which Allah has made lawful to you?... [At-Tahrim: 1].

There are other reports from a number of Companions explaining the Verse, the like of what has been said.

Also there are about eighteen opinions on this matter but the truth is what we have mentioned, this is the view of a number of Companions and those who came after them.

However, forbidding ones wife upon oneself will be considered as no divorce if the person does not specifically intend a divorce with it, but if he does, the statement therefore will be held as that of someone who intends a clear divorce. Reasonably, nothing stops the statement from having the effect of a divorce in that implicit manner just as other implicit statements make effect too.

As for the statement that the man is the most entitled person to his wife in the counting of her divorce..., the proof for that is the hadith recorded by Abu Dawud and An-Nasai, on the authority of Ibn Abbas ﴿ﷺ﴾ regarding the word of Allah:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ

And divorced women shall wait (as regards their marriage) for three menstrual courses, and it is not lawful for them to conceal what Allah has created in their wombs... [Al-Baqarah: 228].

He ﴿ﷺ﴾ said: This is when a man divorces his wife; he has more right to take her back. But if he divorces her the third time, then there is no chance to take her back because divorce is two times.

There is one Ali bin Al-Husayn bin Waqid in the chain of above hadith; there is ill comment against him.

At-Tirmidhi recorded on the authority of 'A'ishah ﴿ﷺ﴾ who said: A man would divorce his wife as he wanted but she would remain his wife as he calls her back in her Iddah, even if he divorces her one hundred times or more than, the act continued until a man said to his wife: By Allah, I will neither divorce you completely and release you to go nor will I keep you with me, the woman said: How that? He replied: I will always divorce you and anytime it remains some little time for you to complete your Iddah I will make the pronouncement to take you back. The woman went to 'A'ishah ﴿ﷺ﴾ and told her what happened. She ﴿ﷺ﴾ remained silent until the Messenger of Allah ﴿ﷺ﴾ arrived and told him, but he too remained silent until this Verse was revealed:

الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ

The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness... [Al-Baqarah: 229].

'A'ishah ﷺ said, So people began to review their divorce pronouncements to see who actually had divorced (legally) and who had not.

Abu Dawud, Ibn Majah, Al-Bayhaqi and At-Tabarani recorded on the authority of Imraan bin Husayn ﷺ that he was asked regarding a man who divorced his wife then copulated with her and he did not bring anybody as a witness neither to the divorce nor to the take-back, he ﷺ said: You have carried out a divorce not according to the Sunnah and you have done a take-back not also according to the Sunnah. Get a witness over your divorce as well as the take-back.

As for the assertion that the man cannot take back the woman after the third divorce until she marries another man, the proof for that is the Word of Allah the Almighty:

حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ

...then she is not lawful unto him thereafter until she has married another husband... [Al-Baqarah: 230].

And due to what is in the Sahihayn and some other works that the Messenger of Allah ﷺ told the wife Rifaah Al-Quradhi:

لا حَتَّى تَذُوقِي عُسَيْلَتَه ويَذُوقَ عُسَيْلَتَكِ

No! Until you taste his little honey and he tastes your little honey.

There is a consensus over that.

باب الخُلْعِ

Chapter 9.3 Al-Khul

Conditional Divorce



When a man did Khul with his wife, she is responsible for herself. She cannot just be taken back. The mahr (the woman will return) can be little or much but should not more than what he gave her as mahr. There must be mutual consent between the spouses over the khul, or the husband been compelled by the judge when there is a misunderstanding between them. It is an eternal separation (between a man and a woman) and the Iddah thereof is one menstrual cycle.

Explanation:

I say: As for the assertion that she is responsible for herself after the khul, the proof for that is the hadith of Ibn Abbas ﴿ﷺ﴾ as found with Al-Bukhari and some others that the wife of Thabit bin Qays bin Shammash ﴿ﷺ﴾ came to the Prophet ﴿ﷺ﴾ and said, O Messenger of Allah, I have nothing against him as regard his character and sense of religion but I fear that I commit unbelief. Then the Messenger of Allah ﴿ﷺ﴾ said:

أَتَرُدِّينَ عَلَيْهِ حَدِيقَتَه

Will you return his garden to him?

The woman replied in the affirmative. Then the Messenger of Allah ﴿ﷺ﴾ said:

اقْبَلِ الحَدِيقَةَ وَطَلِّقْها

Take the garden back from her and divorce her.

In the narration of Ibn Majah and An-Nasai with a chain whose men are trustworthy, she ﴿ﷺ﴾ said: I cannot tolerate him out of hatred. Then Prophet ﴿ﷺ﴾ said: Can you return his garden to him? She ﴿ﷺ﴾ replied in the affirmative,

the Messenger of Allah ﷺ then commanded her husband to take his garden back with no addition in the version of Al-Daraqutni – with an authentic chain – Abu Az-Zubayr said the man actually gave the woman a garden as a mahr. For that, the Prophet ﷺ said: Will you return the garden he gave you? She replied: Yes, with addition (if he wanted). The Prophet ﷺ said: As for the addition, no just give him his garden. She then said, Yes.

This separation ocured for what the woman gave as ransom, had she not been responsible for herself thereafter, the ransom would have been meaningless. We have earlier mentioned that it is not permissible for the husband to take more than what he gave the woman as mahr. This is the view of Ali, Tawus, Ata, Az-Zuhri, Abu Hanifah, Ahmad, Ishaq and the Hadawis. We have some other scholars who say it is permissible for him to take addition over what she took from him as mahr relying on the Word of Allah the Almighty:

فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ

Then there is no sin on either of them if she gives back (the mahr or a part of it) for her Al-Khul (divorce). [Al-Baqarah: 229].

The statement is general for what is much or little.

But the answer to that is that the reports that have forbidden taking an addition have come to limit the general understanding from the Verse.

As for what Al-Bayhaqi recorded on the authority of Abu Sa'id Al-Khudri ﷺ who said: My sister was under a man from the Ansar as a wife. They took a matter to the Messenger of Allah ﷺ who asked her, Will you return his garden? She said she would and even adds to it. She gave him back the garden with the addition.

There is some weakness in the chain of the hadith. Besides that, there is no proof in that because he ﷺ never concurred to the woman's promise of giving the addition. So also the Word of Allah, The Almighty, below indicates the prohibition of taking from what has been given the woman as mahr at divorce except in the condition stated, whereby one can then take what one has given a woman but not everything let alone an addition:

وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ

And it is not lawful for you (men) to take back (from your wives) any of your mahr (bridal money given by the husband to his wife at the time of marriage) which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah (e.g. to deal with each other on a fair basis). [Al-Baqarah: 229].

As for the statement that there must be a mutual consent between the spouses, the proof for that is the Word of Allah the Almighty:

فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ

...there is no sin on them both if they make terms of peace between themselves; and making peace is better... [An-Nisa: 128].

As for getting a judge for the matter, the proof for that is the act of Thabit and his wife taking their matter to the Prophet ﷺ, and the stipulation from him ﷺ that the man must have back his garden and then divorce the woman; another proof is the Word of Allah the Almighty:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا

...if you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from her family... [An-Nisa: 35].

This Verse as it indicates the appointment of two judges, it also applies to a separation impending from a khul, and the Word of Allah the Almighty in the Verse below establishes that:

وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ

...and it is not lawful for you (men) to take back (from your wives) any of your mahr which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah (e.g. to deal with each other on a fair basis). [Al-Baqarah: 229].

The statement made by the wife of Thabit in the story earlier mentioned also indicates that; she said, I fear unbelief for myself. So also what she said, I cannot tolerate him due to hatred. This is what made us inferred a separation from khul.

As for the statement that khul is an eternal separation, the proof for that is the hadith of Ar-Rubayyi bint Muawwidh as recorded by An-Nasai regarding the story of the wife of Thabit that the Prophet ﷺ said:

خُذِ الذِي لَهَا عَلَيْكَ وخَلِّ سَبِيلَهَا

Take what is due to you from her and let her go.

The man replied in the affirmative. The Messenger of Allah ﷺ then commanded her to observe just one menstrual period as Iddah after which she would go back to her people. The men of the chain are all trustworthy.

There is another hadith on her authority recorded with At-Tirmidhi, An-Nasai and Ibn Majah that the Prophet ﷺ commanded her to observe just one menstrual period as her Iddah.

There is Muhammad bin Ishaq in the chain; he narrates his hearing well here.

Abu Dawud and At-Tirmidhi – who classed it as hasan – also recorded on the authority of Ibn Abbas ﷺ that the wife of Thabit bin Qays sought for Khul from her husband and the Prophet ﷺ commanded her to observe just a menstrual period as her Iddah.

Al-Daraqutni and Al-Bayhaqi also recorded with an authentic chain on the authority of Abu Az-Zubayr that he ﷺ said, Take it and let her go.

Al-Daraqutni said Abu Az-Zubayr heard it from several people.

All these Ahadith indicate that the Iddah for khul is one menstrual period, they also indicate that it is an eternally separation of Nikah as well because the normal Iddah for a divorce is three menstrual courses. Also, letting the woman go is also an indication of repudiation of the Nikah not divorce.

As for what occurs in some of the narrations of the hadith that the man was asked to divorce the woman with a pronouncement, I have given a detailed response to it in the work I titled Sharh Al-Muntaqa. It can be visited.

باب الإيلاء

Chapter 9.4 Oath of Desertion

Al-Ila



This is when a husband makes an oath over all his wives or some of them that he will not come closer to them. He can stipulate a period of time for them that may be less than four months, he will abandon them until the time he stipulates elapses. If he stipulates more than four months, he will be asked to either revoke his decision or divorce them at four months.

Explanation:

I say: As for the statement that Al-Ila is for the husband to swear that he will not come closer to his wives or some of them or all of them, this is clear.

As for the statement that it is permissible for him to stipulate a period of time less than four months, the proof for that is what is established in the Sahihayn and some other works that the Prophet ﷺ took an oath to desert his wives for a month then went back to them afterwards.

As for the statement that if the stipulated time is more than four months, that the man will have to choose between revoking his oath or divorcing them, the proof for that is the Word of Allah the Almighty that goes thus:

لِّلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ

Those who take an oath not to have sexual relation with their wives must wait four months... [Al-Baqarah: 226].

Indeed Al-Bukhari recorded on the authority of Ibn Umar ﷺ who said: When four months lapse, the man will be stopped until he makes a divorce.

Al-Bukhari said: That is also mentioned from Uthman, Ali and Abu Ad-Darda ﷺ. That is also the view of 'A'ishah ﷺ and about twelve other men among the Companions of the Messenger of Allah ﷺ.

Al-Daraqutni recorded on the authority of Sulayman bin Yassar that he ﷺ said: I met more than ten men among the companions of the Prophet ﷺ all

of them opined that a man that makes an oath of deserting his wives for more than four months has to be stopped.

He also recorded on the authority of Suhayl bin Abi Salih, who reported from his father that he said: I asked about twelve men from among the Companions of the Prophet ﷺ about a man who makes an oath of deserting his wives; they said: There is nothing upon him until the lapse of four months then he will be asked to either settle the matter or divorce them.

Scholars differ as to the time span of Al-Ila. The view of the majority is that it is four months or more than. They say if he makes an oath for a period less than that he has not carried out any Ila. They cited proof for their opinion with the Verse (mentioned above); even though it does not support that their view because the Verse is only talking about the limit of time a man doing Ila cannot exceed before he either settles the matter or divorces his wives. The Messenger of Allah ﷺ indeed carried out Ila of a month and he went back to his wives afterwards. If Ila has to be four months and above, and that whatever is less than that is not valid, then the Messenger of Allah ﷺ would not have done what he did.

A number of other scholars are of the view that Ila is permissible for a period less than four months. This view is more correct.

باب الظِّهَار

Chapter 9.5 Prohibiting Ones Wife upon Oneself

Adh-Dhihar



This is when a husband says to his wife: You are like my mother's back to me or any other similar expressions. Thus the man must expiate for that statement before he can approach her. The expiation is freeing a slave. If he cannot afford that then he should fast for two consecutive months. If he cannot afford that as well, he should feed sixty poor people. The ruler of the Muslims should help the guilty fulfil that obligation (the feeding) if he were a poor person and cannot fast. The poor person can use some of the items of expiation for himself and his family. If the Dhihar has a stipulated time, then it will not be lifted until the expiration of the stipulated time. If the man were to copulate with his wife before the expiration of the time, or before he carries out the expiation, he would be restrained until he carries out the expiation in the absolute terms, or until the expiration of the stipulated time.

Explanation:

I say: The proof for the expiation mentioned in this section and its order can be found in the Noble Qur'an, and the Messenger of Allah ﷺ explained it in the story of Salamah bin Sakhr ﷺ when he did Dhihar from his wife and after which he copulated with her. The Messenger of Allah ﷺ told him: Free a slave. He ﷺ replied, I swear by He Who sent you with the truth, I do not possess other than her, he slapped himself on the neck while expressing that. The Messenger of Allah ﷺ then said, Observe two months of fasting consecutively. He said, O Messenger of Allah that which happened to me (my meeting with her) occurred while I was fasting. Then he ﷺ said, Give charity. The man replied, I swear by He Who has sent you with the truth, we passed the night with no supper. He ﷺ said, Go to the person in charge of the Zakat of Banu Zurayq, tell him to give you from it then use a load of dates thereof to feed sixty poor people then you can use the rest to take care of yourself and your family.

Ahmad, Abu Dawud, At-Tirmidhi – who classified it as hasan, Al-Hakim – who held it to be sahih, Ibn Khuzaymah and Ibn Al-Jarud recorded it.

In another version of the hadith recorded by Abu Dawud, the Messenger of Allah ﷺ said: Eat from it; you and your family.

The Collectors of Sunan among them At-Tirmidhi who said it is sahih, recorded the like of the hadith on the authority of Ibn Abbas ﴿ﷺ﴾ a hadith also held to be authentic by Al-Hakim.

Ibn Hajar ﴿ﷺ﴾ said: the chain is made up of trustworthy men but Abu Hatim and An-Nasai found fault in it; they said it is mursal. Ibn Hazm ﴿ﷺ﴾ said: the men of the chain are trustworthy; the Irsal (the claim that it is mursal) in it will not affect it. The two hadith have supporting proofs.

Abu Dawud and Ahmad also recorded the like of the hadith on the authority of Khawlah bint Malik bin Thalabah ﴿ﷺ﴾. Ibn Majah also recorded the like on the authority of 'A'ishah ﴿ﷺ﴾. Al-Hakim also recorded it.

There is a consensus on the fact that there must be expiation after the man decides to go back to his wife, the proof for that is the Word of Allah the Almighty:

ثُمَّ يَعُودُونَ لِمَا قَالُوا

...and wish to free themselves from what they uttered... [Mujadilah: 2].

Scholars differ as to the reason for the obligation of the expiation: is it because of going back or the word of Dhihar? They also differ as regards what is forbidden upon the man after the statement, is it only actual copulation with the woman, or with the foreplay? The view of the majority of the scholars is the second.

Because of Allah's saying:

مِنْ قَبْلِ أَنْ يَتَمَاسَّا

...before they touch each other... [Mujadilah: 2].

Some other scholars are of the first opinion. They say touching is a metonymy for copulation.

They also differ with respect to the meaning of going back after Dhihar. Qatadah, Said bin Jubayr, Abu Hanifah – and his companions – and some of the descendants of the Prophet ﴿ﷺ﴾ say the meaning is having the intention of touching what has been forbidden by the word of the Dhihar; this is because by

his intentions he has indeed returned from his former resolve of abandoning (the woman) to acting (with her) whether he acts or not.

Al-Shafi'i ﴿رحمه الله﴾ said: Rather the act implies taking her (back) after the word of Dhihar at the time divorce could have taken place had he wanted to divorce her because likening her to his mother implies complete divorce, but taking her back is the opposite of that.

Malik and Ahmad ﴿رحمهما الله﴾ said: It is his resolution to copulate with her even if he did not.

There is a difference of opinions among the scholars with respect to the man copulating with the woman before expiation. Some scholars say in that case, he must carry out two expiations, in fact, some say three. Yet there is another view that says there is no expiation. But the majority of the scholars are of the view that what is obligatory is to carry out only one expiation. That view is what is more correct just as the proofs aforementioned indicate.

As for the assertion that the man would refrain from the woman if he should copulate with her before he carries out the expiation, the proof for that is the hadith of Ibn Abbas ﴿رضي الله عنه﴾ that the Prophet ﴿ﷺ﴾ told a man who was guilty of Dhihar and copulated with his wife before he carried out the expiation, Do not come near her until you carry out what Allah has commanded you.

The Collectors of Sunan among whom is At-Tirmidhi – who classified the hadith as sahih, so also Al-Hakim, recorded the hadith.

As for the correctness of a declaration of Dhihar that is stipulated for a period of time, the proof for that is the permission given by the Messenger of Allah ﴿ﷺ﴾ to Salamah bin Sakhr ﴿رضي الله عنه﴾ when he told him ﴿ﷺ﴾ that he had declared his wife as forbidden to him until the lapse of Ramadan. The hadith can be found in Musnad Ahmad, Sunan Abi Dawud and SunanAt-Tirmidhi, where it is held to be hasan. Al-Hakim recorded it too. Ibn Khuzaymah and Ibn Al-Jarud held it to be authentic as earlier stated.

What is glaring from the Qur'an is that an expiation (from Dhihar) will be compulsory with the man going back to his wife. Therefore, for time-stipulated Dhihar, the wish to go back to the woman cannot necessitate any expiation if the stipulated time has elapsed. So no expiation can be said to be obligatory in that case. However, if what will make expiation compulsory is a reprehensible word and falsehood, then it becomes obligatory in both cases: time-stipulated and unstipulated Dhihar, because the statement has occurred even with the mere occurrence of the act.

باب اللِّعَان

Chapter 9.6 Oath of Condemnation

Al-Lian

When a man accuses his wife of Zina while the woman denies it, and the man does not stop from the accusation, he will have to carry out Al-Lian by bearing four testimonies with Allah that he is truthful, and the fifth that the curse of Allah should be on him if he were lying. Then the woman too would bear four testimonies that the man is a liar, and the fifth that she should earn the anger of Allah if the man is truthful. If she were to be pregnant or just delivered, the baby would be held to be within what the man is denying. Then the judge will separate them and she will become prohibited to him for life. The baby will be sent with his mother. Whoever accuses the woman of Zina (apart from the husband) such will be called a Qadhif – a slanderer.

Explanation:

I say: The ruling of Lian is mentioned in the Noble Book of Allah the Almighty:

وَٱلَّذِينَ يَرۡمُونَ أَزۡوَٰجَهُمۡ وَلَمۡ يَكُن لَّهُمۡ شُهَدَآءُ إِلَّآ أَنفُسُهُمۡ فَشَهَٰدَةُ أَحَدِهِمۡ أَرۡبَعُ شَهَٰدَٰتِۭ بِٱللَّهِ إِنَّهُۥ لَمِنَ ٱلصَّٰدِقِينَ

…and for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allah that he is one of those who speak the truth. [An-Nur: 6].

As for stipulating the condition that the woman must have not accepted that she was guilty of Zina and the man not going back on his accusation, the proof for that is the fact that the Prophet ﷺ would only allow Lian on that condition.

It is recorded in the Sahihayn and some other works that the Prophet ﷺ would exhort, warn and remind the husband that the punishment of this world is lighter compared to the punishment of the Hereafter.

If the woman were to accept that she is guilty of Zina, then the recommended punishment for Zina for a married person would be meted out on her provided there is no mix-up somewhere. But if the man accepts that he had falsely accuse d his wife, then he would be punished for slandering.

As for how the oath will be carried out, it is as it has been mentioned in the Noble Book and in the Pure Sunnah, as he ﷺ granted Lian between Uwaymir Al-Ajlani and his wife and between Hilal bin Umayyah and his wife ﷺ.

As for the statement that the man has to swear that the child from the alleged illicit relationship is not his, that is not stated in the Noble Book neither could it be traced to the Lian that happened during the time of the Messenger of Allah ﷺ. In the cases mentioned, there was no issue of pregnancy or child.

As for the statement that the judge will have to separate the spouses and that they can never become husband and wife after that, the proof for that is the fairly authentic hadith recorded by Abu Dawud on the authority of Sahl bin Sad ﷺ who said: The established Sunnah is that when there is a Lian, the spouses will be separated and they can never become husband and wife again.

Also in the hadith of Ibn Abbas ﷺ as found with Al-Daraqutni, that the Prophet ﷺ said:

المُتَلَاعِنَانِ إِذَا تَفَرَّقَا لا يَجْتَمِعَانِ أَبَدًا

Spouses who carry out Lian against each other can never become husband and wife again.

Also on the authority of Ibn Abbas ﷺ, Abu Dawud recorded the like of the hadith.

And in the Sahihayn and some other works, it was recorded that Uwaymir divorced his wife three times before the Messenger of Allah ﷺ commanded him to do so. Ibn Shaybah said: That then became the practice in Lian.

As for the statement that the child (from the alleged illicit relationship) will be left with his mother and that whoever accuses her (afterwards) will be given the prescribed punishment, the proof for that is the hadith of Amr bin Shuayb from his father, who also reported from his father ﷺ, who said: The Messenger of Allah ﷺ ruled that the child arising from a Lian could inherit from his mother and vice-versa, and that whoever accuses her on the account of the child would be given eighty strokes of the cane.

Ahmad recorded he hadith; there is Muhammad bin Ishaq in its chain. Apart from him, the rest of the men in the chain are trustworthy.

The hadith (mentioned above) can be supported by other proofs that say a child is considered for the owner of the bed, and here there is no bed. Also the

proofs indicating that the crime of slander must be punished, and a woman who under-went Lian will be considered as someone who was unduly accused because there was nothing to establish the act on her. This is the case with someone who slandered a child of a woman who had a Lian with her husband, it is like slandering the mother, the slanderer must be given the prescribed punishment.

باب العِدَّة

Chapter 9.7 Waiting Period

Al-Iddah

With respect to a woman divorced while she was pregnant, her Iddah will terminate anytime she puts to bed, and for a woman with the tendency of menstruating, her Iddah is three menstrual courses. As for other than these two categories of women, it is three months of waiting. A woman who loses her husband will however wait for four months and ten days. If she too is pregnant, she will be free as well when she puts to bed. No Iddah upon a woman whose husband has not yet copulated with before divorce. A slave girl is like a freewoman in this respect. A woman waiting due to the loss of her husband should avoid beautifying herself, and should stay in the house where she was before the death of her husband or where the information of his death reached her.

Explanation:

I say: As for the assertion that the Iddah of a pregnant woman ends when she puts to bed, the proof for that is the Word of Allah the Almighty:

وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ

...and for those who are pregnant (whether they are divorced or their husbands are dead), their Iddah is until they deliver (their burdens)... [At-Talaq: 4].

As for the statement that a woman having tendency to menstruate will observe three menstrual courses as her Iddah, the proof for that is the Word of Allah the Almighty:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

...and divorced women shall wait (as regards their marriage) for three menstrual courses... [Al-Baqarah: 228].

What is meant in the Verse is hayd as earlier mentioned in the word of the Messenger of Allah ﷺ:

دَعِي الصَّلَاةَ أَيَّامَ أَقْرَائِكِ

Stay off Salah in the days of your menstrual courses.

Al-Quru, even though it is ordinarily used for purity and menstruation, however, the evidences in this context have shown that the intended meaning is only one of the two, which is menstruation as he ﷺ said:

تَعْتَدَّ بِثَلَاثِ حِيَضٍ

She will observe three menstrual courses as her Iddah.

So also is his this statement ﷺ:

تَجْلِس أَيَّامَ أَقْرَائِهَا

Stay off during the days of your quru.

Yet this:

وَعِدَّتُهَا حَيْضَتَانِ

Her Iddah is two hayds.

This is going to be mentioned later.

As for other than the pregnant and menstruating women, whether a young girl who is not menstruating yet or an old woman who has stopped menstruating, such will have to observe three months of waiting, as Allah the Almighty said:

وَاللَّائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَاللَّائِي لَمْ يَحِضْنَ

...and those of your women as have passed the age of monthly courses, for them the Iddah, if you have doubts (about their periods), is three months, and for those who have no courses [(i.e. they are still immature) their Iddah (prescribed period) is three months likewise, except in case of death] . [At-Talaq: 4].

There is a difference of opinions with regard to the Iddah of a woman who stops menstruating due to a factor (other than menopause), some scholars say she will stay until she will menstruate again then she will observe the menstrual period, or if she loses hope then she will carry out the Iddah by counting the months. The truth is what we have said because in that state, the statement, and for those who have no courses, applies to her.

As for the statement that the Iddah of women who lose their husbands is four months and ten days, the proof for that is the Word of Allah the Almighty:

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا

...and those of you who die and leave wives behind them, they (the wives) shall wait (as regards their marriage) for four months and ten days... [Al-Baqarah: 234].

The above is with respect to non-pregnant women, otherwise when they put to bed their Iddah terminates as Allah the Almighty Lord said:

وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ

...and for those who are pregnant (whether they are divorced or their husbands are dead), their Iddah is until they deliver (their burdens)... [At-Talaq: 6].

Indeed the Prophet ﷺ explained that in the most profound way as it has come in the Sahihayn and some other works on the authority of Umm Salamah رضي الله عنها that there was a woman from the Clan of Aslam whose name was Subayah, her husband died while she was pregnant. Abu As-Sanabil bin Bakak then proposed her but she refused to marry him, he said to her: By Allah, it is improper that you get married now, not until the lapse of the second period. But after some ten days, the woman gave birth. She then went to the Prophet ﷺ, and he said to her: Go and get married.

Al-Bukhari also recorded a hadith on the authority of Ibn Mas'ud رضي الله عنه about a woman who lost her husband while she was pregnant, Ibn Mas'ud رضي الله عنه said: Will you place some burden on her without concession? The Minor Chapter of Women (referring to Surah Talaq) was revealed after the Major Chapter of Women (that is, Surah An-Nisa) wherein Allah said (in the former): and for those who are pregnant (whether they are divorced or their husbands are dead), their Iddah is until they deliver (their burdens)....

Ahmad and Al-Daraqutni also recorded on the authority of Ubayy bin Kaab who said: I said, O Messenger of Allah, those who are pregnant, their Iddah is until they deliver (their burdens), is it for both women that are divorced the third time and women whose husband died? The Messenger of Allah ﷺ replied: for both of them.

Abu Yala also recorded it so also Ad-Diya in Al-Mukhtarah, so also Ibn Mardaway. But there is one Al-Muthana bin As-Saba in the chain, Ibn Main held him to be trustworthy but the majority of the scholars of hadith held him to be weak.

Ibn Majah recorded on the authority of Az-Zubayr bin Al-Awwam رضي الله عنه that there was Umm Kulthum bint Uqbah with him, so she said to him one day and she was pregnant, Relieve me by divorcing me. The man then divorced her. He stood up and left for prayer by the time he came back, the woman had delivered a baby. The man then said: As she deceived me Allah will deceive her. The man then went to the Prophet ﷺ to report to him, he ﷺ said:

سَبَقَ الكِتَابُ أَجَلَهُ اخْطُبْهَا إِلى نَفْسِهَا

That is her waiting period, propose to her again.

The men of the chain are trustworthy except Muhammad bin Umar bin Hayyaj who is a fair narrator.

Some of the companions did hold to the two Verses together and say that the Iddah of such a woman is the end of the second period. It is said that she puts to bed before the expiration of four months and ten days the Iddah has not finished; she has to wait to complete the four months and ten days, but if four months and ten days pass and she has not delivered, her Iddah will continue until she gives birth. This is the view of a number of the companions among the people of knowledge. The truth however is that the Iddah of a pregnant woman ends when she delivers her burden, whether it is a case of divorce or death of her husband, this is due to proofs that we have mentioned. They are texts (of the Shareeah) where there are differences of opinions, explaining what is intended.

As for the statement that a woman whose husband had not copulated with before divorce would not observe any Iddah, the proof for that is the Word of Allah the Almighty with regards to women whom their husband had not touched:

يَاأَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا فَمَتِّعُوهُنَّ وَسَرِّحُوهُنَّ سَرَاحًا جَمِيلًا

O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no Iddah have you to count in respect of them. So give them a present, and set them free i.e. divorce, in a handsome manner. [Al-Ahzab: 49].

As for the assertion that the Iddah of a slave girl is the same as that of a freewoman, the proof for that is the hadith recorded on the authority of 'A'ishah ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ said:

طَلَاقُ الأَمَةِ تَطْلِيقَتَانِ وَعِدَّتُهَا حَيْضَتَانِ

The divorce of a slave girl is two pronouncements and her Iddah is two menstrual courses.

At-Tirmidhi, Abu Dawud and Al-Bayhaqi recorded the hadith. Abu Dawud said, It is a report of an unknown person. At-Tirmidhi said, A strange hadith, we do not know it being reported from the Messenger of Allah ﷺ except via Mudhahir, and no report is known for him except this hadith. End of quote.

Ibn Majah, Al-Daraqutni, Malik – in Al-Muwata – and Al-Shafi'i recorded on the authority of Ibn Umar رضي الله عنهما from the Prophet ﷺ who said:

طَلَاقُ الأَمَةِ اثْنَتَانِ وَعِدَّتُهَا حَيْضَتَانِ

The divorce of a slave girl is two pronouncements but her Iddah is two menstrual courses.

There is Amr bin Shabib and Attiyyah Al-Aufi in the chain; both of them are weak narrators. Al-Daraqutni authenticated its being a report back to Ibn Umar رضي الله عنهما.

Al-Daraqutni also recorded that Ibn Mas'ud and Ibn Abbas رضي الله عنهما said: Men is to pronounce the divorce while women are to observe the Iddah.

The hadith has been found faulty due to its being falling back to a Companion.

Ahmad also recorded a report similar to that back to Ali - may Allah be pleased with him. If what is correct regarding these reports is that they are only traceable to the companions asides the hadith of 'A'ishah رضي الله عنها, which is weak as explained, it implies there is no report that could be relied upon on this matter. Therefore, we must go back to the proofs of the Book of Allah and the Sunnah that contain the explanation regarding Iddah of women; those reports do not specify whether they are for free women alone.

As for the statement that a woman waiting because of the death of her husband will not beautify herself, the proof for that is the hadith of Umm Salamah رضي الله عنها recorded in the Sahihayn that the Prophet ﷺ said:

لا يَحِلُّ لِامْرَأَةٍ مُسْلِمَةٍ تُؤْمِنُ بِاللَّهِ واليَومِ الآخِرِ أن تُحِدَّ فوقَ ثَلاثَةِ أيامٍ إلَّا عَلَى زَوجِهَا أَربَعَةَ أَشْهُرٍ وعَشْراً

It does not befit a woman who believes in Allah and the Hereafter to mourn a

dead one for more than three days, except over her husband, she will mourn for four months and ten days.

Also in this section, there is hadith of Umm Habibah and Zaynab bint Jahsh ﴿ﷺ﴾ recorded in the Sahihayn and some other works. There is also a hadith of Umm Salamah ﴿ﷺ﴾ in the Sahihayn that the husband and of a woman died, her people felt her eyes would spoil so they came to the Prophet ﴿ﷺ﴾ and sought his permission for the woman to apply some kohl on her eyes but the Messenger of Allah ﴿ﷺ﴾ said:

لا تَكتَحِلْ قَد كَانَتْ إِحْدَاكُنَّ تَمْكُثُ فِي شَرِّ أَحْلاسِهَا أَوْ شَرِّ بَيْتِهَا فإِذَا كانَ حَوْلٌ فَمَرَّ كَلْبٌ رَمَتْ بِبَعْرَةٍ فَلا حَتَّى تَمْضِيَ أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ

She should not apply kohl (on her eyes); one of them (in the Jahiliyyah) would stay in the innermost of her room and when a year passed a dog would be made to pass and she would throw faeces it. She should not apply the kohl until the expiration of four months and ten days.

Also in the Sahihayn on the authority of Umm Attiyyah ﴿ﷺ﴾ who said, We were forbidden from mourning over a death in what is more than three days except if it were a husband, then it is four months and ten days. We would not apply kohl (in that period), nor perfume nor would we put on dyed cloths except Asb Fabric (made from Yemen that has white and black colour) which was made permissible for us whenever we became pure from a menstrual course, that is, when we cleaned ourselves from our menstrual blood with some little women-perfumed.

There are other Ahadith applicable in the chapter, yet what opposes these Ahadith had been reported.

Ahmad and Ibn Hibban, who said it is authentic, recorded on the authority of Asma bin Umays ﴿ﷺ﴾ that she said: The Messenger of Allah ﴿ﷺ﴾ entered upon me the third day after the death of Jafar bin Abi Talib and said: Do not mourn after today. Asma ﴿ﷺ﴾, no doubt, was the wife of Jafar bin Abi Talib ﴿ﷺ﴾.

The answer to the problem arising from the hadith is that the hadith is a shadh – it opposes more authentic reports. In fact, there is a consensus regarding the opposite of the purport of the hadith. Some people of knowledge said it was abrogated. Al-Bayhaqi found another fault with it, that there is a disconnection in its chain.

The Ahadith stipulating the time a widow will wait, four months and ten days, have to do with other than non-pregnant women. As for pregnant woman, she must observe the Iddah until she delivers her child.

As for the statement that the waiting woman has to stay in the house where she was at the time of her husbands death, the proof for that is the hadith of Furayah bint Malik ﷺ recorded by Ahmad and the Collectors of Sunan, among whom is At-Tirmidhi who declared it as sahih, so also Ibn Hibban and Al-Hakim, that she said: My husband went in search of some infidels, so he met them on his way back but they killed him. The news of his death was brought while I was in a large compound of my family. Then I went to the Prophet ﷺ and mentioned it to him, I said to him, The news of my husbands death came to me while I was in a large compound of my family; he did not leave any wealth for me to inherit, and there is no house of his, if I move to the compound of my family and my brothers it will be better for me regarding my affairs. The Messenger of Allah ﷺ said: Move. When I went out to the masjid, or I got to the room, he ﷺ called me, or sent for me, then he ﷺ said, Stay in the house where the news of your husband's death came to you, until you will complete your waiting period. She said, I did my Iddah there for four months and ten days.

In some of the versions, she said that Uthman ﷺ sent someone to ask her regarding the issue and he ruled with it thereafter.

The hadith has been said to be faulty with claims that are not enough to say it is not proper to cite it as a proof (of the Shareeah).

An-Nasai and Abu Dawud recorded another hadith which Al-Mundhiri ascribed to Al-Bukhari on the authority of Ibn Abbas ﷺ regarding the Word of Allah the Almighty:

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا وَصِيَّةً لِأَزْوَاجِهِمْ مَتَاعًا إِلَى الْحَوْلِ غَيْرَ إِخْرَاجٍ

...and those of you who die and leave behind wives should bequeath for their wives a years maintenance and residence without turning them out... [Al-Baqarah: 240].

They say the Verse has been abrogated by the Verse of inheritance (in Surah Nisa), as regards what Allah has said is the entitlement of the woman who lost her husband, that she will have one-fourth and one-eighth of her husbands estate, and that the one year duration mentioned in the Verses has been abrogated by four month and ten days (later revealed in another Verse).

A number of companions are of the view that the hadith of Furayah is what should be worked with; those after them are of that view also.

It was also recorded from a number of Companions, and those after them, that a woman in her waiting period can go out when there is a necessity. Even though there is no proof in that in such a way that it could be said that it stands in opposition to what is clear in the hadith of Furayah. The bulk of what has been reported are from some Companions, and there is no proof in that especially when they have been discovered to oppose reports that go back to the Messenger of Allah ﷺ.

Al-Shafi'i and Abdul Razzaq recorded from Mujahid, with a cut between him and a companion who reported the hadith from the Messenger of Allah ﷺ, that some men became martyrs at Uhud then their women said to the Messenger of Allah ﷺ, O Messenger of Allah, we feel lonely in our dwellings, can any of us sleep in the dwelling of another. The Messenger of Allah ﷺ allowed them to speak with one another but that whenever it was time for sleep each of them should go back to her dwelling.

The hadith, because of the cut in its chain, is no sufficient as a proof.

باب الاستبراء الأمة المسبية والمشتراة

Chapter 9.8 Copulation with Female Captives

A female captive or a bought female slave or those who are similar, must not be touched (by those who might legally possess them among the Muslim males) until each of them goes through a menstrual course, if she menstruates, but if pregnant, until she delivers her baby. As for the woman who does not menstruate any longer, she must not be touched until it is clear that she is not pregnant. This does not affect a virgin or a minor, as it is also not biding over the seller or his like.

Explanation:

I say: As for the female captive, the proof for that is what Ahmad, Abu Dawud and Al-Hakim – who classified it as sahih – recorded on the authority of Abu Sa'id that the Prophet ﷺ said about the women captives of Awtas:

لا تُوطَأُ حَامِلٌ حَتَّى تَضَعَ ولا غَيْرُ حَامِلٍ حَتَّى تَحِيضَ حَيْضَةً

No pregnant woman (among them) should be copulated with until she gives birth, nor should other than her be copulated with until she goes through one menstrual course.

Another proof is what Muslim and some others recorded that the Prophet ﷺ thought of cursing a man who wanted to copulate with a pregnant captive, a curse that would follow him to his grave.

At-Tirmidhi also recorded a hadith on the authority of Al-Irbad bin Sariyah ﷺ that the Messenger of Allah ﷺ forbade copulation with female captives until they deliver the burdens in their belies.

Ibn Abi Shaybah also recorded on the authority of Ali ﷺ that he said: The Messenger of Allah ﷺ forbade that a pregnant woman should be copulated with until she is delivered of her baby, as for other than a pregnant woman, until she goes through one menstrual cycle.

The chain of the hadith is weak, there is also a disconnection in it.

Ahmad and At-Tabarani recorded that the Messenger of Allah ﷺ said:

لا يَقَعَنَّ رَجُلٌ عَلَى امْرأةٍ وحَمْلُها لِغَيرِهِ

No man should pounce on a woman who is carrying a pregnancy for another man.

There is Baqiyyah and Hajjaj bin Artaah in the chain; both of them are mudalis.[24] Otherwise the hadith includes a female captive, a bought slave, or a gifted one.

So also is the hadith of Ruwayfi bin Thabit ﷺ from the Prophet ﷺ that he said:

مَنْ كانَ يُؤْمِنُ باللَّهِ واليَومِ الآخِرِ فَلا يَسْقِ مَاءَهُ وَلَدَ غَيرِهِ

Whoever believes in Allah and the Last day should not wet another man's child with water (semen).

Ahmad, At-Tirmidhi, Abu Dawud, Ibn Abi Shaybah, Ad-Darimi, At-Tabarani, Al-Bayhaqi, Ad-Diya Al-Maqdisi, Ibn Hibban (who classified it as Sahih) and Al-Bazzar (who classified it as hasan) all recorded the hadith.

As this hadith includes a bought pregnant slave, or her like so also it includes any woman who is carrying a pregnancy for another man – regardless who he might be. The point is that such a man will be held as using his water to wet another man's child.

Al-Hakim also recorded on the authority of Ibn Abbas ﷺ that the Prophet ﷺ, on the Day of Khaybar, forbade that war booties should be sold until they are shared and he ﷺ said:

24 A narrator who narrates from a teacher using suggestive terms which suggest that he heard the narrations from the latter.

لا تَسْقِ مَائَكَ زَرْعَ غَيرِك

Do not use your water to wet another man's farm.

The basis of the hadith can be found with An-Nasai.

Al-Bukhari also recorded on the authority of Ibn Umar ﷺ he said: When a woman slave, who has been copulated with, is gifted, bought, manumitted, she should be stayed off until she observes a menstrual period. This does not however include virgins.

Ahadith that have come of the non-permissibility of copulating with a female captive slave also indicate that it is not permissible with respect to a pregnant female slave that is bought, or the one that is liable to get pregnant. The fact is the same.

As for maidens and minors, the fact does not affect them even though it is possible to say a grown-up maiden can become pregnant despite her maidenhood, but because such rarely occurs, therefore it will not be considered.

As for what Al-Bukhari and some others recorded that the Prophet ﷺ sent Ali ﷺ to Yemen to take one-fifth of their wealth, Ali selected a female captive from among the wealth. He woke up the following day as someone who had taken a bath. When that information got to the Prophet ﷺ, he ﷺ did not frown at his act, he rather said, as mentioned in some of the reports, Ali's portion is better than a housemaid. To merge the narrations that have come over this issue together, this hadith will be understood to mean that the girl was a minor or a virgin, and that a time had gone over her since she was taken as a captive whereby it became clear that she was not pregnant.

As for the woman who does not menstruate again, that she too would be left alone until it becomes clear that she is not pregnant. That is the only way it can be deduced that she is not pregnant since there is no more menstruation. What is known about her is that she has stopped menstruating due to one reason or the other, or because she cannot give birth to a child.

As for the woman who has reached an age whereby she can never be thought of possessing the capacity to see her menstrual period again; that she will become pregnant has become a forgotten issue, just as she will never be thought of menstruating again, here no consideration would be given to rare occurrences.

As for the statement that there is exemption upon the seller, he can sell women

in these categories, it is because there is no proof saying that; no text nor correct analogy, it is just a mere juristic exercise.

باب النَّفَقَة

Chapter 9.9 Spending on Women

The husband must provide for the wife, and for a divorced wife that can still be taken back not a woman in an irrevocable divorce and a woman in the Iddah for lost husband, nor will there be any shelter for them except they are pregnant. It is obligatory on a well-to-do father to take care of his poor son, and vice-versa; so also a master to his slave. It is however not binding upon one close relation to another close relation except from the angle of joining ties of kinship. Whomever one must spend on; it is also a must that one provides clothing and shelter for them.

Explanation:

I say: As for the obligation of the husband to spend over his wife, I am not aware of any controversy regarding that; this is an obligation as stated by the Qur'an. Allah the Almighty says:

وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ

...but feed and clothe them therewith... [An-Nisa: 5].

Al-Mawzui, in his Tafsir named Badr At-Tammam Fi Al-Aayat Wal-Ahkam, did say the Verse indicate what we intended.

Another proof is the permission given by the Messenger of Allah ﷺ to Hind bint Utbah رضي الله عنها that she could take from her husband's wealth, Abu Sufyan, without his knowledge what would suffice her and her children with goodness. The report is in the Sahihayn and some other works.

The Messenger of Allah ﷺ when he was asked as regards the right of the wife upon her husband said:

أَنْ تُطْعِمَهَا إِذَا طَعِمْتَ وَتَكْسُوَهَا إِذَا اكْتَسَيْتَ

That you feed her when can feed yourself and clothe her when you can provide clothing for yourself.

The hadith is recorded with the Collectors of Sunan, and other collectors.

As for the obligation of spending over a divorced wife in a revocable divorce, the proof for that is the hadith of Fatimah bint Qays ﴿رضي الله عنها﴾ that the Prophet ﴿ﷺ﴾ said to her:

إِنَّمَا النَّفَقَةُ والسُّكْنَى لِلمَرْأَةِ إِذَا كَان لِزَوجِها عَلَيْها الرَّجْعَةُ

Provision of alimony and shelter is for a divorced woman whom her husband still has the opportunity to call back.

Ahmad and An-Nasai recorded the hadith.

In the version of Ahmad, it goes thus:

فإِذَا لَمْ يَكُنْ عَلَيهَا رَجْعَةٌ فَلا نَفَقَةَ وَلا سُكْنَى

If she cannot be returned then there is neither alimony nor shelter for her.

There is one Mujalid bin Said in the chain. There is another supportive chain for it but the hadith has been faulted as being a mawquf. Meanwhile, that it is said it goes back to the Prophet ﴿ﷺ﴾ is acceptable on the condition that its source is sahih or hasan.

The Qur'an has established a shelter for her, Allah the Almighty said:

يَاأَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ

O Prophet! When you divorce women, divorce them at their Iddah, and count (accurately) their Iddah. And fear Allah your Lord (O Muslims), and turn them not out of their (husband's) homes... [At-Talaq: 1].

The prohibition is understood to mean the women must not be removed from their husband homes, and that it is incumbent that she is spent on, so also the shelter. This Word of Allah the Almighty also gives support to that:

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ

Lodge them (the divorced women) where you dwell... [At-Talaq: 6].

While this other statement indicates the obligation of spending over her:

وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ

And for divorced women, maintenance (should be provided) on reasonable (scale). [Al-Baqarah: 241].

But this Word of Allah, The Almighty, in the end of the First Verse:

لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا

...It may be that Allah will afterward bring some new thing to pass.

What Allah refers to in the Verse is the possibility that the husband could return his wife; of course, in a revocable divorce.

As for a woman who is divorced for the last time, there is neither alimony nor shelter for her. The proof for that is the hadith recorded on the authority of Fatimah bint Qays ﷺ, found with Muslim ﷺ and some others that the Messenger of Allah ﷺ said regarding a case of a divorce in its third time:

لَا نَفَقَةَ لَهَا وَلَا سُكْنَى

No alimony or shelter for her.

Also in the Sahihayn and some other books, she said: My husband divorced me for the third time; the Messenger of Allah ﷺ neither stipulate any alimony nor shelter for me.

The hadith of Fatimah is sahih, there is no doubt about that. Ahmad, Muslim, Abu Dawud and An-Nasai also recorded that the Messenger of Allah ﷺ said to her: There is no alimony for you except you are pregnant.

Umar and 'A'ishah رضي الله عنهما rejected the hadith; Umar رضي الله عنه said: We will not abandon the Book of Allah and the Sunnah of our Prophet for a woman's statement because we dont know whether she retained it or not. When Fatimah رضي الله عنها heard about that she said: Between me and you is the Book of Allah; Allah the Almighty said: Divorce them at their Iddah until she got to it may be that Allah will afterward bring some new thing to pass. What matter will be decreed after the third pronouncement of divorce?

It was the opinion of Ahmad, Ishaq, Abu Thawr, and Dawud and his Companions, that there is no alimony or shelter for a woman undergoing her final divorce. That is also what the author of Al-Bahr recorded on the authority of Ibn Abbas رضي الله عنهما, Al-Hasan Al-Basri, Ata, Ash-Shabi, Ibn Layla, Al-Auzai, the Imamiyyah Sect and Al-Qasim.

The majority view is that there is no alimony for her but shelter must be provided for her because Allah said:

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنتُم مِّن وُجْدِكُمْ

Lodge them (the divorced women) where you dwell... [At-Talaq: 6].

Something has preceded indicating that the above Verse is in the case of a revocable divorce.

The view of Umar bin Al-Khattab, Umar bin AbdilAziz, Ath-Thauri, scholars of Kufah, An-Nasir and Al-Imam Yahya was that alimony and shelter must be provided for her.

As for the statement that alimony and shelter is not obligatory (upon the husband probably from his wealth) upon a woman observing a Iddah as a result of the death of her husband, this is because there is no proof indicating that, besides a pregnant woman, most especially when it is known that the Messenger of Allah ﷺ had said:

إِنَّمَا النَّفَقَةُ والسُّكْنَى لِلمَرْأَةِ إِذَا كَان لِزَوجِها عَلَيْها رَجْعَةٌ فإِذَا لَمْ يَكُنْ عَلَيهَا رَجْعَةٌ فَلا نَفَقَةَ وَلا سُكْنَى

Alimony and shelter is for a woman whose husband can still take back but when there is no such, there is no alimony or shelter for her.

A Verse earlier mentioned also gives support to that:

لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا

...It may be that Allah will afterward bring some new thing to pass. [At-Talaq:1]

That has to do with a revocable divorce. Therefore, there remains no such ruling for the Iddah of a woman who loses her husband.

It is also understood from the conditional statement stated in the Verse below:

وَإِنْ كُنَّ أُولَاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ

...and if they are pregnant, then spend on them till they deliver... [At-Talaq:6]

It rather indicates the obligation of spending on a pregnant woman, whether in a revocable or irrevocable divorce, or in the Iddah of the death of husband.

This statement of the Messenger of Allah ﷺ to Fatimah bin Qays رضي الله عنها: No alimony or shelter for you except if you are pregnant also indicates that.

Al-Bayhaqi recorded on the authority of Jabir رضي الله عنه a hadith he linked to the Messenger of Allah ﷺ regarding a pregnant woman who was a widow, that he said: There is no alimony for her. Ibn Hajar رحمه الله said the men of the chain are trustworthy but Al-Bayhaqi said what is more preserved is that the statement is that of Jabir. Had it been authentic as a statement of the Messenger of Allah ﷺ it would have served as the end to the controversy about the matter.

It is necessary that we state that the non-obligation of shelter for a woman observing a Iddah of the death of husband does not remove the obligation of

she observing the Iddah where she got the news of her husband's death, while she is there. That indicates that if she were to live in her husband house she will have to stay there until the expiration of her Iddah. A principle that operates here is that of limiting the absolute or specifying the generality; there is no problem regarding that.

As for the statement that it is obligatory on a rich father to provide for his poor son, the proof for that is he hadith of Hind bint Utbah ﴿ﷺ﴾ that was mentioned earlier. Another proof that gives support to that is what was mentioned in the section of obligation of a man spending over those whom he looks after.

As for the obligation of a wealthy son to provide for his father, this is because spending is the least that can benefit him from the Word of Allah the Almighty:

وَبِالْوَالِدَيْنِ إِحْسَانًا

...and be dutiful and good to parents... [Al-Israa:23].

As also indicated in the statement of the Messenger of Allah ﴿ﷺ﴾:

أَنْتَ وَمَالُكَ لِأَبِيكَ

You and your wealth is your father's.

Ahmad, Abu Dawud, Ibn Khuzaymah, and Ibn Al-Jarud recorded it on the authority of Amr bin Shuayb from his father, who also reported from his father.

So also is this hadith:

إِنَّ أَطْيَبَ مَا أَكَلَ الرَّجُلُ مِن كَسْبِهِ وَوَلَدُهُ مِن كَسْبِهِ فَكُلُوا مِن أَمْوَالِهِم

Among the best of the wealth a man can eat from is from his earning, his son is from earnings, so eat from your earning.

Ahmad, Collectors of Sunan, Ibn Hibban and Al-Hakim all recorded it.

The hadith below also supports that:

مَنْ أَبَرُّ يا رسولَ اللَّهِ؟قالَ: أمَّك قالَ: ثُمَّ مَنْ قالَ: أمَّك قالَ: ثُمَّ مَنْ قالَ: أباك

Who should I show more goodness to, O Messenger of Allah? Your mother. Who else? Your mother. Then who else? Your father.

The hadith is recorded in the Sahihayn and some other sources on the authority of Abu Hurairah ﷺ.

As for the obligation of the master spending over his slaves, the proof for that is the hadith of Abu Hurairah ﷺ recorded by Muslim and some others that the Prophet ﷺ said:

لِلْمَمْلُوكِ طَعَامُهُ وَكِسْوَتُهُ بالمَعْرُوفِ وَلَا يُكَلَّفُ مِنَ العَمَلِ إِلَّا ما يُطِيقُ

The slave is to be fed and clothed with goodness, and he should not be burdened with works he cannot bear.

So also is he following hadith:

فَلْيُطعِمْهُ مِمَّا يَأْكُلُ وَيَلْبِسْه مِمَّا يَلْبَسُ

[The master] should feed from what he eats and clothe him from he wears.

The hadith can be found in the Sahihayn and some others on the authority of Abu Dhar -may Allah be pleased with him.

As for the statement that it is not obligatory for one to spend on the rest of one's close relations except for the intention of joining the ties of kinship, it is because there is no proof specifically stipulating that. There are Ahadith regarding joining the ties of kinship, but they are all general order. The kith and

kin that are in need are better to be spent upon and considered first in joining their kinship. Allah the Almighty said:

لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا

Let the rich spend according to his means, and he whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him... [At-Talaq: 7].

عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ

...the rich according to his means, and the poor according to his means... [Al-Baqarah: 236].

As for the statement that whoever one must spend on one must also provide for his clothing and shelter, this is due to what can be understood from the Qur'an Verses and the authentic Ahadith that have preceded.

باب الرَّضاع

Chapter 9.10 Fosterage



It will have a legal effect when the suckling takes place five times from a woman we are sure has milk in her breast, while the baby sucked the breast before he is weaned. When it takes effect, it prohibits what is prohibited under lineage. In the case of a controversy, the word of the foster-mother takes precedence. It is also permissible to give an adult the breast milk even if he were to have beards in order to make it permissible for him to look at the woman.

Explanation:

I say: As for the statement that the legal effect of suckling will take effect when there are five suckling, the proof for that is the hadith of 'A'ishah ﵂ recorded by Muslim and some others that she said:

Among what was revealed in the Qur'an were ten known suckling prohibiting marriage but that was abrogated with five known suckling. So the Messenger of Allah ﷺ died and the recitation was retained in the Qur'an.

The hadith has several other authentic routes as recorded in the sahih. The other hadith reported by 'A'ishah ﵂ is not contradictory to it, that the Prophet ﷺ said

لا تُحَرِّمُ المَصَّةُ ولا المَصَّتَان

One or two suckling cannot cause any prohibition.

Muslim, Ahmad, and the Collectors of Sunan recorded it.

The hadith of Umm Al-Fadl does not oppose it either; Muslim and some others recorded that the Prophet ﷺ said:

لا تُحَرِّمُ الرَّضْعَةُ أو الرَّضْعَتَانِ أو المَصَّةُ أو المَصَّتَانِ

One or two times of breastfeeding cannot prohibit, so also one suckling or two cannot.

In another version, he ﷺ said: Not one or two suckling.

Ahmad, An-Nasai, and At-Tirmidhi recorded a similar hadith on the authority of Abdullah bin Az-Zubayr ﷺ.

The utmost in these Ahadith is that one suckling or two, or one time of breastfeeding or two do not prohibit marriage. This is the meaning of the Ahadith, as made clear in their text; they do not oppose the hadith of five suckling, they only indicate that whatever is less than five suckling is not prohibitive. However, with respect to what can be understood from the Ahadith, they indicate that whatever is more than two suckling is prohibitive. Thus they seem to repulse the hadith of five suckling that allows what is more than two suckling and acting with it imperative most especially with those scholars who hold to the principle: any act built on a reprehensible act will be held to be specific.

Suckling takes effect when a kid sucks milk from the breast pleasingly such that he releases it at his wish without any disturbance.

Those among the scholars who have the opinion that it must be five suckling are Ibn Mas'ud, 'A'ishah, Abdullah bin Az-Zubayr, Atta, Tawus, Said bin Jubayr, Urwah bin Az-Zubayr, Al-Layth bin Sad, Al-Shafi'i, Ahmad, Ishaq, Ibn Hazm and a number of other scholars. That was what was recorded from Ali bin Talib ﷺ.

Meanwhile, the majority of the people of knowledge bear a different opinion; they say a little suckling has the same effect of prohibition as much one so far it reaches the bowel of the baby.

As for the statement that we have to be sure that the mother has milk in her breast, that is because it is the standard of measuring the applicability of the ruling or otherwise. If it is not known that the breast has milk or that the baby really sucks the breast, there is no way to establish the ruling of fosterage.

As for the consideration given to the fact that the suckling should be before the baby is weaned, the proof for that is the hadith of Umm Salamah ﷺ as

recorded with At-Tirmidhi – who authenticated it, so also Al-Hakim – that the Messenger of Allah ﷺ said:

لا يُحَرِّمُ مِنَ الرَّضَاعِ إِلَّا ما فَتَقَ الأَمْعَاءَ فِي الثَّدْيِ وكانَ قَبْلَ الفِطَامِ

Breastfeeding will not necessitate any prohibition except what is taken in from the breast while the baby is not is weaned yet.

Said bin Mansur, Al-Daraqutni, Al-Bayhaqi and Ibn Adiyy recorded on the authority of Ibn Abbas ﷺ that he said the Messenger of Allah ﷺ said:

لا رَضَاعَ إِلَّا مَا كَانَ فِي الحَوْلَيْنِ

No fosterage except if it takes place within age two of the baby.

Al-Bayhaqi said the hadith is authentic on the basis that it is seen as a statement of a Companion. That is also the view supported by Ibn Adiyy and Ibn Kathir.

Meanwhile, Abu Dawud At-Tayalisi recorded on the authority of Jabir ﷺ from the Prophet ﷺ that he ﷺ said:

لا رَضَاعَ بَعْدَ فِصَالٍ ولا يُتْمَ بَعْدَ احْتِلامٍ

There is no breastfeeding after the baby has been weaned, and there is no ornaphage after the puberty.

Ibn Al-Mundhiri said: It is not authentic.

There is another report in the Sahihayn and some others on the authority of 'A'ishah ﷺ who said: When the Messenger of Allah ﷺ entered (one day) and there was a man with me. He ﷺ asked me: Who is this? I said: My foster brother. He ﷺ said: O 'A'ishah, check well who are your foster

brothers because breastfeeding (to effect fosterage) must have been done at breastfeeding to take care of the baby's hunger.

As for the assertion that fosterage prohibits what lineage prohibits, proofs for this had been mentioned earlier regarding the woman who is not permissible in marriage; that was in the Book of Nikah.

As for the assertion that the statement of a foster mother is acceptable (when there is a controversy), that is due to what Al-Bukhari and some other recorders recorded on the authority of Uqbah bin Al-Harith ﷺ that he got married to Umm Yahya bint Abi IIhab, then came a black slave woman and said: I breastfed both of you. Uqbah said he took the matter to the Prophet ﷺ who turned away from him. He said he went to where he turned to and mentioned the matter to him again, he ﷺ then said:

وكَيفَ وقَدْ زَعَمَتْ أَنَّها أَرْضَعَتْكُما فنَهاه

What should we do now when she had claimed that she breastfed both of you?

Thus the Messenger of Allah ﷺ forbade the man from carrying on with the marriage.

In another version, the Messenger of Allah ﷺ told the man, Leave her alone. That version is in the Sahih.

And in another version, the Messenger of Allah ﷺ said: Nothing could we do after she had claimed that? So he ﷺ separated her from Uqbah ﷺ.

That was the view of Uthman, Ibn Abbas, Az-Zuhri, Al-Hasan, Ishaq, Al-Auzai, Ahmad ibn Hanbal and Abu Ubayd. A similar view was reported from Malik ﷺ.

As for the statement that it is permissible to breastfeed a male adult even if he were to have beards in order to make it permissible for him to relate with the woman who has breastfed him, the proof for that is he hadith of Zaynab bint Umm Salamah who said: Umm Salamah said to 'A'ishah ﷺ: You allow this adolescent youth enter your presence, what I abhor. She ﷺ then said: Dont you have the best of examples in the Messenger of Allah ﷺ, indeed the wife of Abu Hudhayfah ﷺ said to the Messenger of Allah ﷺ: O Messenger of Allah, Salim used to enter my presence, and Abu Hudhayfah does not feel comfortable with that. The Messenger of Allah ﷺ then said: Breastfeed him

so that he will be able to enter your presence. Muslim and some others recorded the hadith.

Al-Bukhari had a similar hadith on the authority of 'A'ishah (ﷺ). The mothers of the believers also reported the hadith, so also was Sahlah bin Suhayl and Zaynab bint Umm Salamah. So also were many followers of the Companions, and from them, great number of Muslims reported it. That was the view of 'A'ishah and Ali- may Allah be pleased with both -, so also Urwah bin Az-Zubayr, Ata bin Abi Rabbah, Al-Layth bin Sad, Ibn Uyaynah, Dawud Adh-Dhahiri and Ibn Hazm. That is the truth.

But the majority of the scholars are of the opposing view.

باب الحَضانَة

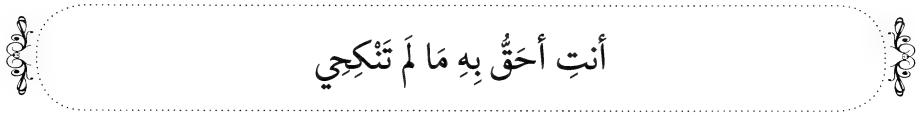
Chapter 9.11 Guardianship



The best person to take care of the kid is his mother so far she has not remarried, after her is the maternal aunt, then the father. If these options are not possible, the judge will assign any upright person from among the close relations to care of him. If the child is whom has reached puberty, he will be made to choose between the father and the mother, but if there is none, he will be put under the care of whomever is thought would take an adequate care of him.

Explanation:

I say: As for the statement that the mother is more entitled to the custody of the kid, the proof for that is the hadith of Abdullah ibn Amr ﷺ that a woman said: O Messenger of Allah, this my son, my belly was his container, my arm was his sofa, my breast was his drink, now his father wants to seize him from me. The Messenger of Allah ﷺ then said:



You are more entitled to him so far you have not remarried.

Ahmad, Abu Dawud, Al-Bayhaqi, and Al-Hakim – who declared it as sahih – recorded the hadith.

There is a unanimous consensus that the mother is more entitled (to the kid) than the father. Also Ibn Al-Mundhiri brought another claim of consensus that the right of the mother in that regard will cease the moment the woman re-marries.

What was however reported from Uthman was that he said the right of the mother remains even after she remarries was also the view of Al-Hasan Al-Basri and Ibn Hazm ﷺ. One of the proofs they cited was the case of Umm Salamah having her son in her custody after she had married the Messenger of Allah ﷺ. But that could be answered with the fact that mere having him in her custody (after re-marrying) without any contention against it is not

sufficient as a proof, coupled with the possibility of unavailability of other than her who could take care of the kid.

They also cited another proof in a hadith that would come soon on the authority of the daughter of Hamzah, the Messenger of Allah ﷺ ruled in that case that the most entitled person to her custody was her maternal aunt, who was the wife of Jafar bin Abi Talib رضي الله عنه. The Messenger of Allah ﷺ explained: The maternal aunt is in the position of the mother.

The answer to that is that the proof does not contradict the available text regarding the right of the mother, rather it can be said that the hadith is the proof for the view of the people of Hanafi School and al-Hadawi Sect who say that when a woman who is in charge of the care for a kid marries, that the marriage should not stop her from the responsibility. Therefore, the hadith of the daughter of Hamzah will only restrict the ruling from the word of the Messenger of Allah ﷺ: You are more entitled to him so far you have not remarried.

As for the statement that the maternal aunt is more entitled after the mother (probably when she is is no more), the proof for that is the hadith of Al-Bara bin Aazib رضي الله عنه as recorded in the Sahihayn and some other works that the daughter of Hamzah became a subject of controversy between Ali, Jafar and Zaid. Ali رضي الله عنه said:

أَنَا أَحَقُّ بِهَا هِيَ ابْنَةِ عَمِّي

I have more right to her; she is my niece.

To that, Jafar said: She is my niece and her maternal aunt is under me.

Zaid too said, She is my cousin.

But finally the Messenger of Allah ﷺ ruled:

الخَالَةُ بِمَنْزِلَةِ الأُمِّ

The maternal aunt is in the position of the mother.

What Zaid intended by she is my cousin was that the Messenger of Allah ﷺ formed a bond of brotherhood between him and Hamzah.

The perspective from which this hadith is used as a proof is because there is an established consensus that the mother takes precedence in the claim to custodianship.

Also the perspective of the comparison is that the maternal aunt is therefore more preferred beside anyone else (because of her position to the kid's mother), even without any distinction between the father and other than him.

There is also another opinion that the father takes precedence; that there is a consensus over that. That is however not correct. The difference of opinions on the matter is well-known. The hadith overpowers whoever opposes the opinion.

As for the father's right in custodianship of his son, the right exists even if there is no specific proof for it. However, it can be understood from the hadith of the Messenger of Allah ﷺ to the mother that you are entitled to him so far you have not remarried, that hadith establishes a right for the husband after the mother and after whoever is in her position, and that is the maternal aunt. It also establishes the fact that, a choice can be made between him and the mother in the matter of security (of the child). The hadith establishes a right for him in a nutshell.

As for the statement that the judge can select whomever he thinks can assure the welfare of the kid, from the kid's close relations, when there is no mother, maternal aunt, and father, while the son is in need of someone to take care of him as a matter of necessity, that is it. Close relations are people who can show more care to the kid. So the judge will select someone (amongst them) to see to the affairs of the kid, but such must be of sound mind, in the view of the judge in order to benefit the kid.

Abdul Razzaq did record from Ikrimah that he said that a wife of Umar bin Al-Khattab ﷺ took his matter to Abu Bakr ﷺ regarding a kid she had with her. Abu Bakr ﷺ said in the matter, She is the only one that has sympathy, mercy, compassion and understanding of the kid; she is the one that has more right regarding her baby so far she has not remarried.

The description of the woman to assume the guardianship in the hadith indicates that Abu Bakr ﷺ made them the reason the woman can be the guardian of the baby. As for the statement that the kid can make a choice between his father and his mother when he reaches the age of puberty, the proof for that is the hadith of Abu Hurairah ﷺ recorded by Ahmad and the Collectors of Sunan, which At-Tirmidhi held to be authentic, that the Prophet ﷺ asked a lad to make a choice between his mother and his father. In another version, it was

recorded that a woman came to the Prophet ﷺ and said: O Messenger of Allah, my husband wants to go away with my son while he has been fetching water for me from the Well of Abu Utbah and helping me. The Messenger of Allah ﷺ asked both of them to come to the lad's presence. The husband was saying, Who is going to dispute with me regarding my child. The Prophet ﷺ then said to the boy: This is your father and this is your mother, take whomever you wish. The boy then took his mother's hand and she took her away. The Collectors of Sunan and Ibn Abi Shaybah recorded it; At-Tirmidhi, Ibn Hibban and Ibn Qattan held it to be sahih.

Ahmad, Abu Dawud, An-Nasai, Ibn Majah and Al-Daraqutni recorded on the authority of AbdulHamid Ibn Jafar Al-Ansari from his grandfather that his grandfather accepted Islam but his wife refused to move with him, then came a little boy who had not reached the age of puberty. Then the Prophet ﷺ sat both the father and the mother differently, then he asked the kid to choose between them, he ﷺ supplicated: O Allah guide him. The son then went to his father.

As for the statement that the person to look after him, when all other recommended persons are no more, must be such that would ensure his welfare, that is because the kid will be in need of someone to take care of him after those whom the Shari'ah has mentioned are no more. So the most righteous person has to be taken for him just as things are being considered for his wealth too. The proofs that have come over the wealth of the orphans, from the Book of Allah and the Sunnah, have indicated that.

10 كتاب البَيْع
Book of Business Transaction

باب أنواع البيوع المحرمة
Chapter 10.1 Types of Forbidden Trade

What is mainly considered in transactions is mere showing of mutual consent (between the buyer and the seller) even if it were by a signal from someone capable of speaking. It is not permissible to sell liquor, dead animals, pigs, idols, dogs, cats, blood, bull semen (in an arranged mating), everything that is prohibited, excess water, and whatever has some danger (of deceit) for the (potential) buyer such as fish in the water, foetus in its mother's womb, trades of al-munabadhah (trade by throw) and al-mulamasah (trade by touch). Prohibited also are selling the milk in the udder, a fled slave, war booties until they are shared, fruits until they are ripe, fleece on an animal, butter in milk, trades of al-muhaqalah, al-mudhabanah, al-muawanah, and al-mukhadarah. Prohibited also are [trade of] al-urbun (earnest sale), selling juice to someone that will produce liquor with it, debt for debt, so also whatever is sold before it is transferred, and transaction of food items is not permissible until they are weighed twice (while buying and while selling). It is not permissible to make exceptions in transactions except a known condition in such a transaction, such as giving a condition with respect to a ride sold while on the journey to take one to his destination before releasing it. It is also not permissible to separate between relations (like the separation between a mother slave and her son), nor can a city dweller sell on behalf of a villager (who brings his goods to city market to sell). At-Tanajush (placing prices on goods to inflate the price not with the interest of buying) is also not permissible, so also is transaction over an existing transaction. Sellers (coming from the hinterland) should not be obstructed on the road. Al-Ihtikar (hoarding of goods) is forbidden, so also is controlled pricing. Loss arising from natural disasters must be off-set (by the

seller). It is not permissible to combine loan and transaction. There cannot be two conditions in one transaction nor two transactions in one. There cannot be profit from goods that cannot be guaranteed. It is also not permissible to sell what is not in ones possession. There can be a pre-condition of no-deceit in a transaction. Parties to a transaction have right to make a choice (of either continuing or discontinuing the transaction) so far they are on the spot of the transaction.

Explanation:

I say: As for the statement that what is considered in transaction is mutual consent even if it were a signal from a person that has the ability to speak, this is due to the fact that there is no legal proof for what some people of knowledge say; that there must be some specific statements that must be made in the course of any transaction without which the transaction will be held invalid.

Also, there is no proof for that even in some of the reports wherein we found statements like I sell this for you at..., Let me buy this from you at.... We do not oppose the fact that transactions made in those clauses are valid but the point of controversy is to say that transactions are not valid except with them. There is no proof for that. Rather Allah said:

تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ

Except it be a trade amongst you, by mutual consent. [An-Nisa: 29].

The Verse thus indicates that mere consent is the issue in transactions. But that has to be accompanied with a word or a signal, or an indication through any other statement that takes place any how or any signal that is understandable. The Messenger of Allah ﷺ said:

لَا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا بِطِيبَةٍ مِن نَفْسِهِ

It is not permissible to take the wealth of another person except with his permission.

So when there is permission for the business with mutual consent, nothing else that is needed to be considered.

As for the statement that it is not permissible to sell liquor, dead animal, pigs and idols, the proof for that is the hadith of Jabir ﴿رضي الله عنه﴾ recorded in the Sahihayn and some others that he ﴿رضي الله عنه﴾ heard the Messenger of Allah ﴿ﷺ﴾ say:

إِنَّ اللَّهَ حَرَّمَ بَيْعَ الخَمْرِ والمَيْتَةِ والخِنْزِيرِ والأَصْنَامِ

Verily, Allah prohibited the sale of liquor, dead animals, pigs, and idols.

As for the non-permissibility of selling dogs and cats, it is due to what has also come in the Sahihayn and some others on the authority of Ibn Mas'ud ﴿رضي الله عنه﴾ who said: The Messenger of Allah ﴿ﷺ﴾ forbade profiting by selling dogs.

There is another hadith recorded by them on the authority of Abu Juhayfah ﴿رضي الله عنه﴾ that is similar to that of Ibn Mas'ud ﴿رضي الله عنه﴾ .

Also in Sahih Muslim there is another report on the authority of Jabir ﴿رضي الله عنه﴾ that the Prophet ﴿ﷺ﴾ forbade the sale of dogs and cats.

An-Nasai also recorded with an authentic chain that the Messenger of Allah ﴿ﷺ﴾ forbade profiting from sales of dog except hunting dogs.

As for the prohibition of selling blood, the proof for that is the hadith of Abu Juhayfah ﴿رضي الله عنه﴾ recorded in the Sahihayn wherein he said: Verily the Messenger of Allah ﴿ﷺ﴾ forbade profiting from blood sale.

As for the prohibition of selling bull semen which is let out by its owner, this is due to what is recorded by Al-Bukhari on the authority of Ibn Umar ﴿رضي الله عنه﴾ that the Prophet ﴿ﷺ﴾ forbade the sale of bull semen. The like of the hadith can be found in Sahih Muslim on the authority of Jabir ﴿رضي الله عنه﴾. Meanwhile there are some Ahadith under the section permitting giving some token to the owner of the bull without him requesting or stipulating any conditions with respect to that. This is what is written in the book, Al-Hujjah.

As for the prohibition of selling forbidden items, the proof for that is what is recorded in the Sahihayn on the authority of Jabir ﴿رضي الله عنه﴾. It was said to the Messenger of Allah ﴿ﷺ﴾: Fat of dead animals is used in daubing ships and as cream for the body; people also use it as fuel for their lamps, is it proper? The Messenger of Allah ﴿ﷺ﴾ replied:

لَا هُوَ حَرَامٌ

No; it is forbidden.

Then he ﷺ added:

قَاتَلَ اللَّهُ اليَهودَ إِنَّ اللَّهَ لمَّا حَرَّمَ عَلَيهِم شُحُومَهَا جَمَلُوهُ ثُمَّ بَاعُوهُ فَأَكَلُوا ثَمَنَه

May Allah curse the Jews, verily when He forbade fat of dead animals for them, they would melt it, then sell it, and make benefit with the money.

Ahmad and Abu Dawud also recorded on the authority of Ibn Abbas ﷺ that the Prophet ﷺ said:

لَعَنَ اللَّهُ اليَهُودَ حُرِّمَتْ عَلَيهِم الشُّحُومُ فَبَاعُوهَا وَأَكَلُوا أَثْمَانَهَا وإِنَّ اللَّهَ إِذَا حَرَّمَ عَلى قَومٍ أَكْلَ شَيءٍ حَرَّمَ عَلَيْهِم ثَمَنَه

May Allah curse the Jews; animal fat was forbidden for them but they sold it and took its profit. Indeed whenever Allah prohibits a thing for a people, He will prohibit taking money from it.

As for prohibition of selling excess water, the proof for that is the hadith of Iyas bin Abd that the Prophet ﷺ forbade the sale of excess water. Recorded by Ahmad, Abu Dawud, An-Nasai and At-Tirmidhi who held it to be sahih.

A-Qushayri said: The hadith is upon the standard of Al-Bukhari and Muslim.

Another proof is a similar hadith on the authority of Jabir ﷺ recorded by Muslim, Ahmad, and Ibn Majah.

The hadith has come to specify the former, and it is recorded in the Sahihayn on the authority of Abu Hurairah ﷺ, that the Messenger of Allah ﷺ said:

لا يُمْنَعُ فَضْلُ المَاءِ لِيُمْنَعَ بِه فَضْلُ الكَلأِ

Excess water should be prevented (from the grazing) in order to prevent them from grazing on the excess pasture.

In another version, he ﷺ said:

لا يُبَاعُ فَضْلُ المَاءِ لِيُبَاعَ بِه الكَلأُ

Excess water is not to be sold in order to prevent the excess pasture.

The [last] version stated was recorded by Muslim.

As for prohibition of selling what has some danger [of deceit] (for its buyer), the proof for that is the hadith of Abu Hurairah ﷺ recorded with Muslim and some others that the Prophet ﷺ forbade transactions in what has deceit (for the buyers).

Ahmad also recorded it on the authority of Ibn Mas'ud that the Prophet ﷺ said:

لَا تَشْتَرُوا السَّمَكَ فِي المَاءِ فَإِنَّه غَرَرٌ

Do not buy fish in the water; indeed it is deceitful.

There is Yazid bin Abi Ziyad in the chain. Al-Bayhaqi supported the view that the hadith is a mawquf but it applies under the topic of transactions in what has deceit in it.

As for prohibition of selling the foetus in its mother's womb, this is due to the prohibition that did come from the Prophet ﷺ regarding that, as recorded in Sahih Muslim and some others on the authority of Ibn Umar ﷺ.

There is another report in the Sahihayn that the people of Jahiliyyah used to transact in muttons to the extent of animals in their mothers wombs.

Transactions in what is the mother's womb is a kind of trade based on a camel giving birth to what is in its womb after which the latter too will become pregnant and give birth, while business transaction had been made on the one born later since the grandmother was pregnant, (the business transaction made on it could be with respect to disposing the animal itself, or that another transaction is connected to its birth since the grandmother was pregnant)! The Prophet ﷺ forbade them from that.

Some said the trade is in this format: selling the child of a pregnant camel when it has not come. Some say it is selling the child of the child in the womb, as it has come in the report (earlier mentioned).

There is a prohibition of buying what is in the belly of cattle, as it has come in the hadith of Abu Sa'id ﷺ which is recorded by Ahmad, Ibn Majah, Al-Bazzar and Al-Daraqutni. There is Shahr bin Huhsab in the chain, there is some weakness in him.

As for prohibition of al-munabadhah and al-mulamasah, the hadith for that is recorded on the authority of Abu Sa'id ﷺ and recorded in the Sahihayn that the Messenger of Allah ﷺ forbade al-mulamasah and al-munabadhah in trade.

Al-mulamasah is (lexically) touching the cloth of another with one's hand in the night and the day and with no intention of taking it.

Al-munabadhah is when a man throws his cloth at another person to become a transaction without looking or showing consent.

That is another hadith in the section on the authority of Anas ﷺ as recorded by Al-Bukhari and Muslim.

As for prohibition of selling what is in the udder, or selling a fleeing slave or war booties or fruits on their trees until they are ripe, or fleece on animal back, or fat in milk; the proof for selling what is in the udder is the hadith of Abu Sa'id ﷺ that was earlier mentioned regarding prohibition of selling what is in the bellies of cattle. Thus if that is prohibited, what is in their udders are also prohibited in sale.

So a fleeing slave is also prohibited, so also war booties until they are shared. There is a proof for the latter in the hadith of Ibn Abbas ﷺ that is recorded with An-Nasai, so also on the authority of Abu Hurairah ﷺ in a hadith recorded with Ahmad and Abu Dawud. There is also a prohibition against selling fruits until they are suitable for eating, the fur on animal backs, the milk in the udder and the fat in the milk; all that on the authority of Ibn Abbas ﷺ as recorded by Al-Daraqutni and Al-Bayhaqi. But there is Umar bin Farruh in the chain; Yahya bin Main and others held him to be sound.

The Ahadith on prohibiting selling what has deceit in it give support to the Ahadith in this section because the entire kinds of transaction contained in this section as the effect of deceit in them.

Al-Bukhari, Muslim and some others also recorded on the authority of Ibn Umar ﷺ that the Prophet ﷺ forbade selling of fruits until what is good thereof is clear; he ﷺ forbade both the seller and buyer from engaging in that.

Muslim also recorded a similar hadith on the authority of Abu Hurairah ﷺ. Yet there is another similar report in the Sahihayn on the authority of Anas ﷺ.

As for al-muhaqalah, al-muzabanah, al-muawanah and al-mukhadarah, the proof regarding them is the hadith of Anas ﷺ recorded with Al-Bukhari, he said: The Messenger of Allah ﷺ forbade al-muhaqalah, al-mukhadarah, al-munabadhah, al-mulamasah and al-muzabanah.

Also in the Sahihayn on the authority of Jabir ﷺ, he said: The Prophet ﷺ forbade from al-muhaqalah, al-muzabanah and al-muawanah.

There are other Ahadith in the section.

Al-muhaqalah is selling an unharvested farm produce in exchange with a known kilogram of dry food. Al-muzabanah is selling some fresh food items (like dates, wheat etc.) in exchange with some loads of dry items. Al-muawanah is selling assumed dates on a date-palm in advance for more than a year in just a transaction. All these forms of transaction have deceit in them and are devoid of certainty. Al-mukhadarah is selling vegetables before they are suitable for sale.

As for prohibition of al-urbun, the proof for that is the hadith recorded by Ahmad, An-Nasai and Abu Dawud on the authority of Amr bin Shuayb from his father, and his father from the grandfather; he ﷺ said: The Prophet ﷺ forbade trade of al-urbun.

Trade of al-urbun is when a buyer pays a dirham or what is similar before the goods to be bought arrives on the condition that if the buyer were to lose interest in the trade, the money paid (already) will be forfeited by him; there will be no compensation.

This prohibition is not contradicted by what Abdul Razzaq recorded in his musnad on the authority of Zaid bin Aslam ﷺ that he asked the Prophet ﷺ regarding trade of al-urbun and he ﷺ said there was nothing wrong with it. The chain of the hadith contains Ibrahim bin Abi Yahya; he is a weak narrator. Moreover, there is a cut between the Tabi and the Messenger of Allah ﷺ in the chain of the hadith.

As for prohibition of selling any fruit juice whose buyer will use to produce alcoholic drinks, the proof for that is the following hadith:

لَعَنَ اللَّهُ بَائِعَ الخَمْرِ وشَارِبَهَا ومُشْتَرِيَهَا وعَاصِرَهَا

Allah curses the seller of liquor, its drinker, its buyer, and its extractor or producer.

At-Tirmidhi and Ibn Majah recorded it; the men of its chain are authentic, on the authority of Anas ﷺ.

Ahmad, Ibn Majah and Abu Dawud recorded a similar hadith. There is AbdurRahman bin Abdillah Al-Ghafiqi in the chain; some said he is unknown; he was one of the rulers of Andalusia. However, Ibn As-Sakan said the hadith is authentic.

At-Tabarani recorded in Al-Awsat on the authority of Buraydah ﷺ back to the Messenger of Allah ﷺ that he ﷺ said:

مَنْ حَبَسَ العِنَبَ أَيَّامَ القِطَافِ حَتَّى يَبِيعَه مِن يَهُودِيٍّ أَوْ نَصْرانِيٍّ أو مِمَّنْ يَتَّخِذُهُ خَمْراً فَقَد تَقَحَّمَ النَّارَ عَلَى بَصِيرَةٍ

Whoever stores grapes on the day of their harvest and later sells them to a Jew or a Christian or anybody that will use them to produce liquor, such has indeed knowingly plunged himself into the fire.

The chain of the hadith above is sound. There are several other Ahadith in the section.

As for prohibition of selling nothing for nothing, that is paying debt by debt, the proof for that is the hadith of Ibn Umar ﷺ recorded with Al-Daraqutni and Al-Hakim – who held it to be authentic, that the Prophet ﷺ forbade selling nothing for nothing; debts for debts.

Another hadith that gives support to that is the one recorded by At-Tabarani on the authority of Rafi bin Khadij that the Prophet ﷺ forbade selling nothing for nothing; debt for debt. There is Musa bin Ubaydah Ar-Rabadhi, he is a weak narrator. Ahmad ﷺ said about him: It is not permissible to report from him, in my opinion; I am not aware of anyone who reported this hadith besides

him. He ﷺ also said: There is no authentic hadith on this issue but there is a consensus that it is not permissible to pay a debt with another debt. End of quote.

The strengthening of the Ahadith that have come under the condition of exchange in transactions such as this hadith:

إِذَا كَانَ يَداً بِيَدٍ

...when it is from hand to hand (then it is permissible).

The hadith is recorded in the sahih.

So also is this hadith:

مَا لَمْ يَتَفَرَّقا وبَيْنَكُما شَيءٌ

...so far they have not separated.

As for the prohibition of selling what is not in one's possession, the proof for that is the hadith of Jabir recorded by Muslim and some others that the Messenger of Allah ﷺ said:

إِذَا ابْتَعْتَ طَعَاماً فَلَا تَبِعْهُ حتَّى تَسْتَوْفِيَهُ

When you buy a food item, do not resell it until it is transferred to your possession.

Muslim and others also recorded that the Messenger of Allah ﷺ forbade that goods be resold until they have been moved.

Ahmad also recorded on the authority of Hakim bin Hizam that the Prophet ﷺ told him:

إِذَا اشْتَرَيْتَ شَيئاً فَلا تَبِعْهُ حتَّى تَقْبِضَهُ

When you buy something, do not resell it until you have laid your hands on it.

There is one Al-Ala Ibn Khalid Al-Wasiti in the chain.

Abu Dawud, Al-Daraqutni, Al-Hakim, and Ibn Hibban – both of which said the hadith is authentic – recorded on the authority of Zaid bin Thabit ﷺ that the Prophet ﷺ forbade sale of goods where they are bought until the traders have taken them to their places.

There are other Ahadith under section. What is said above is the view of the majority of the scholars.

As for the prohibition of transaction of food items until they are weighed twice, the proof for that is the hadith of Uthman recorded by Ahmad and Al-Bukhari that the Prophet ﷺ said: When you buy (food items) weigh them and when you want to sell them weigh them.

Ibn Majah, Al-Daraqutni and Al-Bayhaqi recorded on the authority of Jabir ﷺ that he said the Messenger of Allah ﷺ forbade selling a food item before it reaches two sa; one for the buyer and the other for the seller. There is Ibn Abi Layla in the chain.

There is also another hadith on the authority of Abu Hurairah ﷺ with a sound chain. But the reports through other than him are not free from one problem or the other. That is the view of the majority of the scholars.

As for the statement that it is not permissible to make exceptions in transactions except when it is known, the proof for that is the hadith of Jabir ﷺ recorded by Muslim and some others that the Prophet ﷺ forbade making exceptions in trade. In the addition of An-Nasai, At-Tirmidhi and Ibn Hibban – both of which authenticated it – expect if it is a known condition.

The trade is in this format: that a person sells something and then makes some exceptions from the good, it is not permissible except those conditions are known with the kind of the trade. An example of a known condition is what Jabir ﷺ did while he requested that his camel take him to Al-Madinah after he had sold it to the Messenger of Allah ﷺ. The report is the Sahihayn and some others, on his authority.

As for the statement that it is not permissible to separate between the relations,

the proof for that is the hadith of Abu Ayyub ﷺ who said: I heard the Messenger of Allah ﷺ saying:

مَنْ فَرَّقَ بَين وَالِدَةٍ وَوَلَدِهَا فَرَّقَ اللَّهُ بَيْنَهُ وبَيْن أَحِبَّتِهِ يومَ القِيَامَةِ

Whoever separates a mother (slave) from his son, Allah will separate him from his loved on one the Day of Resurrection.

Ahmad, At-Tirmidhi, Al-Daraqutni, and Al-Hakim – who declared it sahih – recorded it.

And on the authority of Ali ﷺ he said: The Prophet ﷺ commanded me to sell two slave boys who were brothers, I sold them and thus separated them. When I mentioned that to him ﷺ, he said: Go and look for them, return them and sell them together. Ahmad recorded it, so also Ibn Khuzaymah – who declared it sahih - Ibn Al-Jarud, Ibn Hibban, Al-Hakim and some others, recorded it. On the authority of Abu Musa ﷺ who said: The Messenger of Allah ﷺ cursed whoever separates a father from his son, and a brother from another brother. Ibn Majah and Al-Daraqutni recorded it and there is no problem with is chain.

The hadith of Ali ﷺ, that he separated a slave mother from her son; the Prophet ﷺ forbade him from doing that; thus he ﷺ revoked the transaction. Abu Dawud, Al-Daraqutni and Al-Hakim – who authenticated it – recorded the hadith. The hadith has been said to be faulty due to a cut in its chain.

There are other Ahadith applicable under the section. There is a view that there is a consensus over its purport. That view is questionable however.

As for prohibition of a city dweller being agents for the village dweller selling goods for them, the proof for that is the hadith of Umar whereby the Prophet ﷺ forbade such a transaction. Al-Bukhari recorded it.

Muslim and some others recorded that the Prophet ﷺ said:

لا يَبِيعُ حَاضِرٌ لِبَادٍ دَعُوا النَّاسَ يَرْزُقُ اللَّهُ بَعْضَهُم مِنْ بَعْضٍ

A city-dweller should not sell on behalf of a village-dweller; allow people that Allah enrich them through one another

Also in the Sahihayn on the authority of Anas, he ﷺ said: We were prohibited from a city-dweller selling on behalf of a village-dweller; even if they were to be from the same father and mother.

As for the prohibition of At-Tanajush adding to the price of a commodity to cause an inflation in the market, the proof for that is the hadith of Abu Hurairah ﷺ in the Sahihayn, that the Prophet ﷺ forbade that a city-dweller should sell on behalf of a village-dweller, and from placing prices on commodities without the intention of purchase.

Also in the Sahihayn on the authority of Ibn Umar ﷺ who said: The Messenger of Allah ﷺ forbade placing price on commodities by someone who is not interested in the purchase.

As for the prohibition of making a transaction over another transaction, the proof for that is also the hadith of Ibn Umar ﷺ recorded with Ahmad and An-Nasai that the Messenger of Allah ﷺ said:

لا يَبِعْ أَحَدُكُمْ عَلَى بَيْعِ أَخِيْهِ

None should make a transaction over the transaction of his brother.

It is also recorded in the Sahihayn with a similar wording. Also in the Sahihayn on the authority of Abu Hurairah ﷺ it is reported that the Messenger of Allah ﷺ said:

لا يَبِعِ الرَّجُلُ عَلَى بَيْعِ أَخِيْهِ

No one should price over his brother's transaction.

There is a report that whoever sells a good to two people, the transaction will be in favour of the first man. Ahmad, Abu Dawud, An-Nasai, and At-Tirmidhi – who declared it as sahih – so also Abu Zurah, Abu Hatim, and Al-Hakim.

As for the prohibition of blocking (villagers) who bring items for sale on the roads, the proof for that is the hadith of Abu Hurairah ﷺ recorded with

Muslim and some others that the Prophet ﷺ forbade that villagers who bring goods to markets are met at the outskirts of the city by the city dwellers; should anyone meets them and buys items from them, the owner has the right to repudiate the transaction when he gets to the market (and see things for himself).

There is another hadith in the Sahihayn on the authority of Ibn Mas'ud ﷺ who said: The Prophet ﷺ forbade meeting villagers who come on rides with goods to the market. The like of the hadith is also recorded in the Sahihayn on the authority of Ibn Umar and Ibn Abbas ﷺ.

As for the prohibition of hoarding goods, the proof for that is the hadith of Ibn Umar ﷺ recorded by Ahmad, Al-Hakim, Ibn Abi Shaybah, Al-Bazzar and Abu Yala back to the Messenger of Allah ﷺ, that he said:

مَن احْتَكَرَ الطَّعَامَ أَرْبَعِينَ لَيْلَةً فَقَدْ بَرِئَ مِنَ اللَّهِ وَبَرِئَ اللَّهُ مِنْهُ

Whoever hoards any food item for forty nights, Allah has freed Himself from him, and he is freed from Allah.

There is Asbag bin Abd Zaid in the chain; there are some ill comments against him.

Muslim and others also recorded on the authority of Mamar bin Abdillah back to the Messenger of Allah ﷺ that he said:

لاَ يَحْتَكِرُ إِلاَّ خَاطِئٌ

None will hoard goods except a sinner.

Ahmad and Al-Hakim also recorded a similar hadith on the authority of Abu Hurairah ﷺ.

As for the prohibition of price control (by the state), the proof for that is the hadith of Anas ﷺ recorded with Ahmad, Abu Dawud, At-Tirmidhi, Ibn Majah Ad-Darimi, Al-Bazzar and Abu Yala, that there was once an inflation in the prices of goods in the time of the Messenger of Allah ﷺ so people said: O Messenger of Allah, fix price for us. He ﷺ replied:

إِنَّ اللَّهَ هُوَ الْمُسَعِّرُ الْقَابِضُ الْبَاسِطُ الرَّازِقُ وَإِنِّي لأَرْجُو أَنْ أَلْقَى اللَّهَ وَلَيْسَ أَحَدٌ مِنْكُمْ يُطَالِبُنِي بِمَظْلَمَةٍ فِي دَمٍ وَلاَ مَالٍ

Allah is the One that controls the prices; He is the provider; He reduces and increases the price. I wish that I meet Allah while none of you will make any demand (of compensation) from me either with regards to wealth or blood.

Ibn Hibban and At-Tirmidhi held it to be authentic. There are other Ahadith in the section.

As for the requirement of offsetting loss from crops destroyed by natural disasters in sale, the hadith for that is the one recorded on the authority of Jabir ﷺ that the Prophet ﷺ placed the requirement to offset loss from sold crops. Ahmad, An-Nasai and Abu Dawud recorded it. Muslim also recorded it in this wording: He ﷺ commanded that loss by natural disasters from sold crops be indemnified.

In another version of Muslim and others, he ﷺ said:

إِنْ كُنْتَ بِعْتَ مِنْ أَخِيكَ ثَمَراً فَأَصَابَتْه جَائِحَةٌ فَلا يَحِلُّ لَكَ أَنْ تَأْخُذَ مِنْهُ شَيئاً بِمَ تَأْخُذُ مَالَ أَخِيكَ

If you sold farm crops to your brother, then later affected by natural disasters, you are not permitted to take any (money) from him (that is, the money should be returned to the buyer and the loss goes to the seller); on what grounds will you take his wealth?[25]

There is another hadith in the section on the authority of 'A'ishah ﷺ, also another one in the Sahihayn on the authority of Anas ﷺ. That is also the view of Al-Shafi'i, Abu Hanifah, Al-Layth and the rest of the Kufan jurists ﷺ.

As for the impermissibility of loaning as a condition for a transaction; making two conditions in a transaction, the proof for that is the hadith of Abdullah ibn Amr ﷺ that the Prophet ﷺ said:

25 Scholars differ as to whether the order of this hadith is compulsory or it only calls to the recommendation of the act of indemnification of losses, because of other Ahadith which states that after a transaction had been completed under recognized Islamic stipulations a buyer bears any further responsibility. The answer therefore is that this condition is one of the stipulations that will make this kind of transaction valid, even after the crops had been sold. [Editor]

لَا يَحِلّ سَلَفٌ وَبَيْعٌ وَلَا شَرْطَانِ فِي بَيْعٍ وَلَا رِبْحُ مَا لَمْ يُضْمَنْ وَلَا بَيْعُ مَا لَيْسَ عِنْدَكَ

It is not permissible to make a loan and transaction a condition for one each other, nor making two conditions in one transaction, it is also not permissible to make profit from what has been assured nor should one sell what is not in one's possession.

Recorded by Ahmad, Abu Dawud, An-Nasai and At-Tirmidhi – who authenticated it, so also was Ibn Khuzaymah and Al-Hakim.

What is meant by As-Salaf here is loaning. Malik ﷺ said: This is when someone gives a loan to another in order to have an opportunity to purchase more goods from his debtor. Such a trade is void because the creditor loans him the money so that he can win some sympathy in the price of some goods he wants to buy from the debtor.

As-Salaf can also mean As-Salam (forward buying) an example is when a seller says to a buyer, I will sell my slave to you upon the condition that you will loan me such-and-such of his wealth.

As for stipulating two conditions in a transaction, an example is when a seller says, I sell my goods to you at one thousand if you are going to pay me now, but two thousand if you are going to pay me later. Some say it is in this format, I will sell my cloth to you at this price, and I will bear the cost of its dyeing and sewing.

As for the prohibition of entering two transactions in one transaction, the proof for that is he hadith of Abu Hurairah ﷺ recorded with Ahmad, An-Nasai, Abu Dawud and At-Tirmidhi who authenticated it, that the Prophet ﷺ forbade entering into two transactions in a transaction. In the version of Abu Dawud, he ﷺ said:

مَن بَاعَ بَيْعَتَيْنِ فِي بَيْعَةٍ فَلَه أَوكَسُهما أَو الرِّبَا

Whoever engages in two transactions in a transaction, then he can choose from whichever is shorter (in price) or he will fall into usury.

Ahmad also recorded it on the authority of Abdullah bin Masud who said The Prophet ﷺ forbade two exchanges in one exchange.

Samak رحمه الله said: this is when someone sells some goods and says: if the buyer pays immediately the price is such-and-such, but if he pays later the price is such-and-such. The men of the chain n are trustworthy. What Samak said is indeed the meaning of two transactions in a transaction. The meaning of two clauses in a transactions has preceded in a similar manner, however, the meaning given there wasn't correct rather a transaction of two clauses in a transaction is a transaction whereby two conditions are stated therein, here it is two transactions in a transaction.

As for the prohibition of making profit from goods one cannot guarantee, the proof for that is what has we mentioned under the prohibition of combining loaning and transaction in a transaction. And that is selling something one cannot guarantee. An example of that is selling purchased goods before they are taken into possession.

As for prohibition of selling what is not in one's possession, the proof for that is the hadith of Hakim bin Hizam رضي الله عنه who said: O Messenger of Allah, a man came to me and asked me to sell what was not in my possession to him, can I go ahead with the transaction and later get it for him from the market? The Messenger of Allah ﷺ replied: Do not sell what is not in your possession. Ahmad and the Collectors of Sunan recorded it. At-Tirmidhi and Ibn Hibban rendered it authentic.

What is intended by his statement, what is not in your possession is what is not in your authority or power.

As for saying it is permissible to stipulate a condition of no deceit in a transaction, the proof for that is the hadith of Ibn Umar رضي الله عنهما recorded in the Sahihayn, that a man whom people used to cheat much in transaction was mentioned to the Messenger of Allah ﷺ, he ﷺ said: You should say to whoever you want to enter into any transaction with No deceit!

There are several other Ahadith under the section. What is clear from the statement is that whoever says it has right to make choice in such transaction whether he was cheated or not.

As for the statement that the choice (to go ahead with a transaction or otherwise) is when the parties are on the spot of transaction, before they part, the proof for that is the hadith of Hakim bin Hizam رضي الله عنه recorded in the Sahihayn that the Prophet ﷺ said:

الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا

Two parties to a transaction have a choice so far they have not parted.

There is another similar hadith in the Sahihayn on the authority of Ibn Umar ﷺ. There are other Ahadith too.

It was the view of a number of the Companions that there is a choice (for parties in a transaction) when the parties are still on the same spot. Among the Companions upon that view were Ali, Abu Barzah Al-Aslami, Ibn Umar, Ibn Abbas, Abu Hurairah ﷺ, and from among the Tabiun were Shurayh, Ash-Shabi, Tawus, Ata and Ibn Abi Mulaykah ﷺ. That was what Al-Bukhari reported about them. Ibn Al-Mundhir also recorded that Said bin Al-Musayyab, Az-Zuhri and Ibn Abi Dhib ﷺ, all of whom were scholars of Madinah, were of that view too, so also Al-Hasan Al-Basri, Al-Auzai, Ibn Jurayj and others ﷺ. Ibn Hazm ﷺ said emphatically: We are not aware of any differing opinion to that from among the Tabiun except from An-Nakhai only.

The author of Al-Bahr recorded a similar view from As-Sadiq, Al-Baqir, ZaynulAabidin, Ahmad bin Isa, An-Nasir and Al-Imam Yahya. He also said the same thing regarding Al-Shafi'i, Ahmad, Ishaq and Abu Thaur.

But people in the Hanafi and Maliki Schools-of-thought, and some others, are of the view that once there is an exchange of goods and price, there is no room for choice. The more correct view is the first opinion.

باب الرّبَا

Chapter 10.2 Usury

Riba



It is forbidden to exchange gold with gold, silver with silver, wheat with wheat, barley with barley, dates with dates, and salt with salt except with the same measure (weight) of each other and should be exchanged hand-to-hand. Scholars differ as to the permissibility of exchange of similar goods for each other besides those mentioned items. However, if the items are different, it is then permissible to exchange them for one another even if the quantity of exchange rate is not the same, but on the condition that the exchange is hand-to-hand. It is not permissible to exchange the same kind of goods for each other while there is no knowledge of their measures being the same even if another different item is included. It is also not permissible to exchange fresh fruits with dried ones except for the people doing Araya exchange. It is also not permissible to exchange mutton with a living animal. It is however permissible to sell an animal in exchange for two or more than of the same class. It is not permissible to trade in Eenah.

I say: The six classes mentioned are what have come in the text of Ahadith such as the hadith of Abu Sa'id in the following wording:

لذَّهَبُ بِالذَّهَبِ والفِضَّةُ بالفِضَّةِ والبُرُّ بالبُرِّ والشَّعِيرُ بالشَّعِيرِ والتَّمْرُ بالتَّمْرِ والمِلْحُ بالمِلْحِ مِثْلاً بمِثْلٍ يَداً بِيَدٍ فَمَنْ زَادَ أوْ اسْتَزَاد فَقَد أَرْبَى الآخِذُ والمُعْطِى فِيه سَوَاءٌ

Gold for gold, silver for silver, wheat for wheat, barley for barley, date for date, and salt for salt, in the same measure of both for each other and hand-to-hand; whoever adds or asks for addition has dealt in usury. Both the taker and the giver are the same.

The hadith is recorded in the Sahihayn, and the rest of the Ahadith recorded in the Sahihayn and some other books on this subject do not mention the six items.

Scholars differ as to whether or not this ruling is applicable to other items besides those that were mentioned in the hadith such that it would be said that

other items would be forbidden as they are, in the sense of Riba Fadl (usury of excess) and Riba Nasiah (postponed usury), when the same kind of them are exchanged for each other, so also they differ whether they (other items) will be held forbidden in the sense of Riba Nasiah alone (without considering the excesses) when they are of different kinds (as those mentioned are) when they meet the same condition for that permissibility. Scholars of the Literalist School say no; other items cannot be added to the items mentioned. But other scholars say that other items can be added so far they possess the same Illah (the reason for the ruling).

There then differ over what constitutes the Illah. Some say the Illah for recognizing the items as being similar is when they of the same kind and taste, some say rather it is when they are of the same kind, worth in weight, measure and sustenance. Some say it is when they are of the same kind and Zakat is payable from them.

The proof of those who say that the ruling is applicable to other items is a hadith recorded by Al-Daraqutni and Al-Bazzar on the authority of Ubadah ﷺ and Anas that the Prophet ﷺ said:

مَا وُزِنَ فِمِثْلٌ بِمِثْلٍ إِذَا كَانَ نَوْعًا وَاحِدًا ، وَمَا كِيلَ فَمِثْلُ ذَلِكَ ، فَإِذَا اخْتَلَفَ النَّوْعَانِ ، فَلَا بَأْسَ بِهِ

Whatever is measured, it must be like for like, provided it is of the same class. Whatever is weighed, it is like that, but when the classes are different, there is no problem.

The author of At-Talkhis referred to the hadith above but did not make any comment about it. Meanwhile there is Ar-Rabi bin Sabih in the chain, Abu Zurah and some other scholars held him to be trustworthy while a number of others held him to be weak.

However as the hadith indicates the applicability of the ruling to other items, it also indicates that the Illah is the convergence of the weight and measure together with similarity in kind.

One of the proofs indicating that applying this ruling to other items can fall into usury is he hadith of Ibn Umar ﷺ recorded in the Sahihayn that the Messenger of Allah ﷺ forbade al-muzabanah – that a person should sell non-harvested dates in his farm, if a farm of date-palm, in exchange for measured weight of dry dates, and non-harvested grapes in exchange for

measured weight of raisins (dry grapes), so also other farm crops in exchange for measured weight of harvested food. He ﷺ forbade all that.[26]

In the version of Muslim, he ﷺ forbade all kinds of fruits that are estimated.

The hadith thus establishes the fact that there is Riba in an exchange of fresh grapes with dry grapes. And the version of Muslim indicates that the matter is wider than that.

But another proof which indicate that the ruling is applicable to other items is the hadith recorded by Malik ﷺ in Al-Muwataa via Said bin Al-Musayyab ﷺ that the Prophet ﷺ forbade exchanging mutton for living animal. Al-Shafi'i and Abu Dawud (in Al-Marasil) also recorded the Ahadith. Al-Daraqutni brought the hadith in a connected form in Al-Gharaib via Malik then Az-Zuhri ﷺ on the authority of Sahl bin Sad ﷺ, but Al-Daraqutni said the Ahadith is weak. But he said the mursal version is more authentic (back to the mursal point), Ibn Abdil-Barr ﷺ followed that view.

The hadith has another supportive version on the authority of Ibn Umar ﷺ as recorded by Al-Bazzar but there is Thabit bin Zuhayr in the chain; he is weak. He also recorded it through Abu Umamah bin Abi Yala via Nafi; this Abu Umamah is weak too. Meanwhile, there is a stronger supportive route, the report of Al-Hasan from Samurah as recorded by Al-Hakim, Al-Bayhaqi and Ibn Khuzaymah. There is a support in the hadith of Rafi bin Khadij and Sahl bin Abi Hathmah with At-Tirmidhi as regard the respite for trading in al-muzabanah for a necessity (called al-araya), in that case it will be permissible to exchange fresh grapes with raisins, and as regards all kinds of fruits that are estimated.

Another proof indicating that similarity is to be considered in the issue is the hadith of Abu Sa'id ﷺ recorded by Ahmad and Muslim in this version:

لا تَبِيعُوا الذَّهَبَ بالذَّهَبِ وَلَا الوَرِقَ بِالوَرِقِ إلاَّ وَزْناً بِوَزْنٍ مِثْلاً بِمِثْلٍ سَوَاءً بِسَوَاءٍ

Do not sell gold for gold nor silver for silver except they are of the same measure, the like for like, the same for same.

26 These transactions are forbidden because of the deceit involved, a non-harvested produce cannot be estimated properly while the dry item it is exchanged for can be measured adequately. Therefore this reason cannot be used to rule for the prohibition of the transaction under discussion if the stipulated conditions are met, as it is the opinion of the majority of the scholars. (Editor)

Ahmad, Muslim and An-Nasai recorded on the authority of Abu Hurairah ﷺ:

الذَّهَبُ بالذَّهَبِ وَزْناً بوَزْنٍ مِثْلاً بِمِثْلٍ والفِضَّةُ بالفِضَّةِ وَزْناً بوَزْنٍ مِثْلاً بِمِثْلٍ

Gold for gold, measure for measure, the same for same; silver for silver, measure for measure the same for same.

Also with Muslim, An-Nasai and Abu Dawud on the authority of Fadalah bin Ubayd ﷺ, the Prophet ﷺ said:

لا تَبِيعُوا الذَّهَبَ بالذَّهَبِ إِلَّا وَزْناً بِوَزْنٍ

Do not sell gold for gold except the measure is the same.

Among the reports that have come regarding consideration for weight is the hadith of Ibn Umar that was earlier mentioned, it was mentioned that he ﷺ forbade selling fresh grapes in exchange with dry grapes upon the same weight.

Among what will be mentioned later is prohibition regarding sale of heap of corn whose weight is not known.

As for the permissibility of taking excess in exchange with regard to items of different kinds, the proof for that is what has been established in the Sahih on the authority of Ubadah bin As-Samit ﷺ from the Prophet ﷺ who said:

الذَّهَبُ بِالذَّهَبِ ، وَالْفِضَّةُ بِالْفِضَّةِ ، وَالْبُرُّ بِالْبُرِّ ، وَالشَّعِيرُ بِالشَّعِيرِ ، وَالتَّمْرُ بِالتَّمْرِ ، وَالْمِلْحُ بِالْمِلْحِ مِثْلًا بِمِثْلٍ سَوَاءً بِسَوَاءٍ يَدًا بِيَدٍ ، فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ ، فَبِيعُوا كَيْفَ شِئْتُمْ إِذَا كَانَ يَدًا بِيَدٍ

Gold for gold, silver for silver, wheat for wheat, barley for barley, date for date, and salt for salt, in the same measure and the same amount for each other, and hand-to-hand; but when these classes are different then sell them the way you want provided it is hand-to-hand.

There are other Ahadith in the section.

As for the statement that knowledge of equality is considerable, the proof for that are the Ahadith that have come in the Sahih from the statement of the Messenger of Allah ﷺ that he said:

مِثْلاً بِمِثْلٍ سَوَاءً بِسَوَاءٍ وَزْناً بِوَزْنٍ

The same for same, the like for like, and measure for measure.

What this indicates is that it is not permissible to sell anything in its class except after the knowledge regarding its worth and value (in exchange). Another hadith indicating that fact is the hadith of Jabir ﷺ recorded with Muslim and some others wherein he ﷺ said, the Messenger of Allah ﷺ forbade selling a heap of dates whose standard weight is not known. This means that it is not permissible to sell anything except after having knowledge regarding it.

As for the statement that the fact that one of the two similar items to be exchanged has a material connected to it does not change anything, rather it will still be considered as if it does contain other things, the proof for that is the hadith of Fadalah bin Ubayd ﷺ as recorded by Muslim and some others wherein he said: I bought a necklace of gold and some beads on the day of Khaybar with 12 dinar, I I separated it and found more than 12 dinar in it. I mentioned that to the Prophet ﷺ who said: Do not sell it until you separate it.

That is the view of a number of the Salaf among whom was Umar bin Al-Khattab ﷺ. Al-Shafi'i, Ahmad, and Ishaq were also of the view. But a group of Hanafi scholars and the Hadawi people were of the view that it is permissible to take excess in exchange of goods that are connected to each other on the condition that the excess is the same in worth of the goods it is exchanged for.

As for the non permissibility of selling fresh items with dry ones, the proof for that is the hadith of Ibn Umar ﷺ earlier mentioned under the section of prohibition a man selling the dates of his date-palm with measured dry dates, and selling fresh grapes with measured dry grapes. So also is the hadith of Rafi bin Khadij and Sahl Ibn Abi Hathmah, both have mentioned earlier.

As for the permissibility of that in the case of Araya (necessity that brings an exchange), the proof for that is the hadith of Zaid bin Thabit ﷺ recorded by Al-Bukhari and others, that the Prophet ﷺ permitted Araya trade, that is exchange of fresh dates with dry dates on the estimate of the worth of both

in weight. In another version found in the Sahihayn, he ﷺ permitted the trade of Araya for a member of a household that they should take it upon the estimate of dry dates which they will eat its fresh equivalent.

Ahmad and Al-Shafi'i recorded a hadith, authenticated by Ibn Khuzaymah, Ibn Hibban and Al-Hakim on the authority of Jabir رضي الله عنه who said: I heard the Messenger of Allah ﷺ when he permitted the people driven by necessity (to exchange fresh dates with dry dates) that they should do the exchange upon estimation of a wasq (which is equal to sixty Sa) or two or three or four.

There are other Ahadith in the section.

What is intended in Araya trade was that the Prophet ﷺ permitted the poor who had no date-farm to buy fresh dates from rich people who had date-farm, that they could eat them from the latter's tree in exchange with an estimate of dry dates.

Al-Araya is plural of Ariyyah. It means gift of a date palm but without change of ownership. It is the view of the majority of the scholars that the trade of Araya is permissible. Whoever has a contrary view have the Ahadith in the section to contend with.

As for the prohibition of exchanging mutton with living animal, the proof for that has preceded.

As for the permissibility of selling one animal for two or more than if they are of the same class, the proof for that is the hadith of Jabir رضي الله عنه recorded with Ahmad and the Collectors of Sunan, and authenticated by At-Tirmidhi that the Prophet ﷺ sold a slave for two slaves in exchange. Muslim also recorded it in his Sahih.

Muslim and others also recorded on the authority of Anas that the Prophet ﷺ exchanged Safiyyah رضي الله عنها with seven heads from Dihyah Al-Kalbi رضي الله عنه.

Ahmad and Abu Dawud recorded on the authority of Ibn Amr رضي الله عنه that the Prophet ﷺ commanded him to raise a detachment of soldiers with some camels that were with him. He said: I was able to get some people some mounts until the camels was exhausted and remained some people who had no mounts. I told the Messenger of Allah ﷺ that the camels had finished and that there were some people with no mounts. He ﷺ then said: Buy some camels with the young camels from the Zakat that would come until this army can be equipped. He (Ibn Amr) رضي الله عنه said: I began to buy an (adult) camel with two young camels or three, from the Zakat that would come until the army could be equipped. So when the camels meant for the treasury actually arrived, the Messenger of Allah ﷺ paid the debt back with them.

Meanwhile there is Muhammad bin Ishaq in the chain; there are some

comments against him. The author of Al-Fath said the chain of the hadith is strong.

Also Ahmad and the Collectors of Sunan – authenticated by At-Tirmidhi and Ibn Al-Jarud in the hadith of Samurah, that the Prophet ﷺ forbade buying animals with animal in a deferred payment. This report is on the authority of Samurah ﷺ in the route of Al-Hasan ﷺ, and he did not hear from Samurah.

The merger done by Al-Shafi'i ﷺ over the two hadith is that what is intended by deferred payment in the second hadith is when both the two parties differ their payments, while the first hadith is with respect to one of the two parties deferring his payment. The transaction in the first hadith looks like a form whereby both the buyer and the seller pay debt with debt, while the picture in the second hadith is that only of them is seeking a deferred payment, which is permissible.

As for the prohibition of trade of Al-Eenah, the proof for that is the hadith of Ibn Umar ﷺ that the Prophet ﷺ said:

إِذَا ضَنَّ النَّاسُ بِالدِّينَارِ وَالدِّرْهَمِ وَتَبَايَعُوا بِالْعِينَةِ وَاتَّبَعُوا أَذْنَابَ الْبَقَرِ وَتَرَكُوا الْجِهَادَ فِي سَبِيلِ اللَّهِ أَنْزَلَ اللَّهُ بِهِمْ الْبَلَاءَ فَلَا يَرْفَعُهُ حَتَّى يُرَاجِعُوا دِينَهُمْ

When people get attached to dinar and dirham, trade in Al-Eenah, follow the tails of cattle, and abandon Jihad in the path of Allah, Allah will send trial upon them, He will not remove it until they go back to their religion.

Ahmad, Abu Dawud At-Tabarani and Ibn Hibban – who authenticated it – recorded it. Al-Hafidh said the men of the chain are trustworthy.

What is intended by Al-Eenah is a trade whereby a person sells his commodity to another at a price for a given period of time, then buys it back from him cash at a lower a price .

Among the reports indicating the impermissibility of such a trade is what Abu Ishaq As-Sabi reported from his wife that she was in the presence of 'A'ishah ﷺ with the slave-wife of Zaid bin Arqam, who asked: O Mother of Believers, I sold a slave boy to Zaid bin Arqam at 800 dirham in a deferred payment and (I later) bought him back from him at 600 dirham cash. 'A'ishah ﷺ said: Both of you have engaged in an evil trade; his Jihad with the Messenger of Allah ﷺ

has become null unless he repents to Allah. Al-Daraqutni recorded the report, there is Al-Galabah bint Ayfa in the chain.

It was reported from Al-Shafi'i that he said the report above is not authentic. Ibn Kathir confirmed that statement of Al-Shafi'i in his Irshad.

Malik, Abu Hanifah, Ahmad, and Al-Hadawis are of the view that trade of al-Eenah is not permissible. But Al-Shafi'i and his companions said it is permissible. There are many reports regarding the prohibition of Al-Eenah, Al-Bayhaqi created a section for it in his Sunan.

باب الحق في خيارات التجارة

Chapter 10.3 Right of Options in Trade



It is obligatory upon whoever is selling a defective commodity to inform the buyers about it, if not, the buyer has the right of choice (of returning the goods). The seller bears the benefit made by the buyer from the commodity before returning it because of the liability incurred by the buyer within the time. The buyer can return the goods sold to him for a deceit later discovered, such as an animal sold with deceit of filled udders; it is to be returned together with a sa of dates or whatever the parties agree to. Whoever is deceived in a trade has the option of revoking the trade likewise a villager whom a town dweller bought from on his way to market. Parties trading in a forbidden transaction both have the right to repudiate the trade. Whoever bought a commodity he did not access has the right to revoke it when he later saw it. Someone who bought a commodity by choice of pleasure can still return it. When the parties disagree in the course of a transaction, the seller has the say.

Explanation:

I say: As for the obligation of the seller making known the faults in the goods, the proof for that is the hadith of Uqbah bin Aamir ﷺ recorded by Ibn Majah, Al-Daraqutni, Al-Hakim, and At-Tabarani. Uqbah said: I heard the Messenger of Allah ﷺ say:

المسلم أخو المسلم لا يحل لمسلم باع من أخيه بيعا وفيه عيب إلا بينه

Muslims are brothers of one another; it is not permissible for a Muslim to sell a faulty good to his brother, except he makes him aware of it.

Al-Hafidh ﷺ said, in Al-Fath, the chain is fair. Ahmad, Ibn Majah, Al-Hakim in his Al-Mustadarak recorded the like of the hadith on the authority of Wathilah back to the Messenger of Allah ﷺ but there is Abu Jafar Ar-Razi and Abu Siba in the chain. There is a disagreement among the scholar of hadith regarding the former while the latter is an unknown narrator.

Ibn Majah, At-Tirmidhi, An-Nasai, and Ibn Al-Jarud recorded, so also Al-

Bukhari with a suspended chain, on the authority of Al-Ada Ibn Khalid who said: The Prophet ﷺ wrote for me: This is what Al-Ada bin Khalid bin Haudhah bought from Muhammad the Messenger of Allah. He bought a slave boy or girl who had no disease or any defect, nor odious; there is no malicious trade between Muslims.

The following hadith also support that:

من غشنا فليس منا

Whoever deceives us is not part of us.

The above hadith is in Sahih Muslim ﷺ and some other books on the authority of Abu Hurairah ﷺ .

The Ahadith thus indicate that whoever sells a defective good and does not inform the buyer has engaged in an illegal transaction under the Shari'ah. Therefore, the buyer has the right to make a choice of either keeping or returning it. If he keeps it, the seller will be regarded as a sinner but the transaction is valid because with that the buyer has shown his acceptance. However, if he is not pleased with the goods, he has the right to return them. The detection of fault in the goods has negated his acceptance because he did not accept them upon that.

There is another proof regarding returning faulty goods; that will be mentioned later.

As for the statement that Al-Kharaj (the right to the benefit achieved from the faulty goods before realizing the fault) is to the disadvantage of the seller, the proof for that is the hadith of 'A'ishah ﷺ recorded by Ahmad, Collectors of Sunan, and Al-Shafi'i, considered authentic by At-Tirmidhi, Ibn Hibban, Ibn Al-Jarud, Al-Hakim, Ibn Al-Qattan and Ibn Khuzaymah that the Prophet ﷺ ruled that Al-Kharaj is settled against the liability.

In a report, a man bought a slave boy and made some proceeds from him, but later discovered that the slave has some defects. He thus returned the slave boy to the seller. The seller said: My slave had been used. The Prophet ﷺ then said:

الغلة بالضمان

The benefit is against the liability incurred.

The meaning of Al-Kharaj is an income or benefit. That is, the buyer has the advantage of the benefit or income made from the goods (before the fault is discovered) because of the liability he incurred within the period.

As for returning the good due to a defect discovered in it, this is because the buyer accepts the good during the transaction with pleasures but later came to know of the hidden defect in it. The discovery of the fault will erase his acceptance because he will no more be pleased with the transaction, which is the factor that is considered in the transaction under the Shari'ah. An example of that is a camel that is deceitfully sold with udders filled with milk whereas the camel has been left for some days without been milked in order to retain the milk. In such case, the buyer has the choice of repudiating the transaction having discovered the defect in the good.

It has been established in the Sahihayn that the Messenger of Allah ﷺ said:

لا تصروا الإبل والغنم فمن ابتاعها بعد ذلك فهو بخير النظرين بعد أن يحلبها إن رضيها أمسكها وإن سخطها ردها وصاعا من تمر

Do not keep camels and sheep in order to have their udders filled with milk and then sell. Whoever buys such an animal and discovers the fault after he has milked it has two options; he either keeps it if he is pleased with it that way but if he detests it he should return it with a sa of dates.

In the version of Muslim and some others, it has that:

من اشترى مصراة فهو منها بالخيار ثلاثة أيام وإن شاء أمسكها وإن شاء ردها ومعها صاعا من تمر لا سمراء

Whoever buys a camel kept to have its udders filled has three days to make a choice, he can either keep the animal if he chooses to do so, or return it but with a sa of dates, not wheat.

As for the statement the good can be returned upon any other thing they both agreed to, that is because human beings rights are left to them (such that one can decide over his right as he wishes unlike the right of Allah that must be given to Him unquestionably). Therefore, it is permissible that he accepts a replacement for his right as he can decide to leave it totally, or demand for only a part of it.

As for the statement that whoever is deceived in a transaction has the right to repudiate, there is no disagreement among the scholars with respect to this if the condition of no deceit is agreed to before the transaction. This is because of what has earlier been mentioned from the hadith of Ibn Umar ﷺ that a man used to be deceived in transactions, the Prophet ﷺ said to him: Whoever you transact with tell him No deceit!. The hadith is recorded in the Sahihayn.

It is also established that the Prophet ﷺ made three days option for Habban bin Munfidh who was being deceived in transactions, as it has come in the hadith of Ibn Umar ﷺ, so also in the hadith of other companions.

As for the transaction wherein that condition was not stated and the buyer was deceived, the transaction is not that of the Muslims among one another, rather it involves play, deceit, and loss of profit. For that, the one who has been deceived has the right to make a choice, and the deceit involved has brought non-acceptance of he who has the right which is the consideration in a legal transaction, as was earlier discussed.

As for the statement that there is option of choice for whoever sells a commodity before he reaches the market, the proof for that is the hadith of Abu Hurairah ﷺ recorded by Muslim ﷺ and some others that the Prophet ﷺ forbade meeting a load of caravan (heading to a market), if a person were to meet such a caravan and buys from it, the owner of the load has the right to revoke the transaction when he gets to market (and sees market situation).

As for the statement that each party to a transaction has the right of choice when their transaction has taken place in an illegal manner, like the manners earlier mentioned, this is because if the prohibition will lead to a nullification of the transaction as well stated in the principles (of the Shari'ah), the transaction will be as if there is none, therefore none of the parties is bound by such, they both have equal right to revoke the transaction. This is what is called revoking what is not binding.

However, if the prohibition regarding the transaction does not necessitate the nullity of the transaction, such a transaction can be passed by each of the parties since they have met the regulation of the Shari'ah which is the mutual consent between both of them as regards the transaction. However, if there is no acceptance either from both or either of them because of the fact that the transaction fails to meet the Shari'ah stipulation, then there is no transaction.

As for the statement that whoever buys a commodity he did not see can return it when he sees it, the proof for that is the hadith of Abu Hurairah (ﷺ) from the Messenger of Allah (ﷺ) that he said:

من اشترى ما لم يره فله الخيار إذا رآه

Whoever buys what he did not see has the right to make a choice regarding the transaction when he sees it.

Al-Daraqutni and Al-Bayhaqi recorded the hadith. There is Umar bin Ibrahim Al-Kardi in the chain; he is a weak narrator. But both of them also recorded another mursal hadith from the Prophet (ﷺ), there is Bakr bin Abi Maryam in the chain, he is also weak. The like of the hadith is not enough as a proof but right of choice can be established by other Ahadith forbidding deceit in transactions.

If a person is not aware as to the reality of a transaction, such a trade is not out of being deceitful whether it is intentional from the seller or not. The transaction must meet the Shari'ah stipulation which is mutual consent between the seller and the buyer. Thus, when the buyer is not pleased with the good when he eventually sees it, there is no consent thereof; thus the transaction becomes void.

As for the statement that the buyer has the right to return the good he bought with choice of pleasure, an example of that is when someone buys something with the condition that he has ample time to make a choice. The proofs for that are the various authentic Ahadith that have come over the issue of choice making on the spot transaction, such as the following:

كل بيعين لا بيع بينهما حتى يتفرقا إلا بيع الخيار

Two parties to a transaction have no transaction until they part unless if it were a transaction based on right of choice

In another version, it goes thus: Except if it were an exchange (based on) choice.

Both the hadith above are in the Sahihayn. There are in both books some other versions indicating this fact. Nevertheless, there is a different interpretation

to the meaning of Al-Khiyar (choice) [with many scholars]. Some gave this meaning while some other said another thing.

The fact that there can be stipulation of conditions in transactions is established by the hadith that has been earlier mentioned such as the hadith of the fellow who used to deceived in transactions at the time of the Messenger of Allah ﷺ and he ﷺ said: When you transact with people, tell them, No deceit!

There are versions in some of the routes of the hadith saying the right to choice is for three days; that has been mentioned.

As for the statement that when parties to a transaction differ as to the transaction the seller has the say, the proof for that is the hadith of Ibn Mas'ud ﷺ recorded with Abu Dawud, An-Nasai, Ibn Majah, Al-Daraqutni, and Al-Bayhaqi, authenticated by Al-Hakim and Ibn As-Sakan that the Messenger of Allah ﷺ said:.

إذا اختلف البيعان وليس بينهما بينة فالقول ما يقوله صاحب السلعة أو يترادان

When a buyer and a seller differ as to the transaction such that there is no proof to settle the matter, the statement that will be reckoned with is that of the owner of the merchandise, or both of them should revoke the transaction.

In another version, he ﷺ:

والمبيع قائم بعينه

...the transaction is in their presence.

In another version he ﷺ said:

إذا اختلف البيعان والمبيع مستهلك فالقول قول البائع

When the buyer and the seller differ and the transaction is spent, it is the word of the buyer that will be reckoned with.

In another version, he ﷺ said:

...when there is no proof with any of them.

There are many other narrations regarding this issue, which I had mentioned copiously in Sharh Al-Muntaqa. The conclusion derived from all of them is that the word of the buyer will reign supreme in such circumstances.

Some other scholars have opined that the hadith here limits the Ahadith that go thus: ...it is the claimant that will produce proof while the denier will swear. It is coming later.

Some other scholars say there is generality and specificity between them in a perspective. There is a great difference with the people of knowledge regarding the matter.

باب السـلـم

Chapter 10.4 As-Salam or As-Salaf



This is the situation whereby a buyer pays money in advance for some specified goods agreed upon by both him and the seller on the terms of contract that the goods are delivered at a particular time; the buyer will not take back except the specified item or the capital given. In addition, the buyer will not proceed with any action over the item until it is handed over to him.

Explanation:

I say: As-Salam is a specific form of transaction. It is not permissible therefore to have a delay in both the payment and receiving processes; that will be tantamount to selling an unknown with an unknown. The prohibition regarding that has been mentioned shortly. It is therefore imperative that the capital money is paid when entering into the contract. There is a consensus regarding the fact that the conditions that are usually met in the ordinary transactions must also be met in this form of transaction coupled with the fact that the capital must be received at the sitting.

A number of people of knowledge have mentioned some other conditions with respect to this form of transaction, but there are proofs for those.

As for the assertion that the goods to be bought in this form of transaction must be known and the period they are to be delivered be specified, the proof for that is what is reported in the Sahihayn and some other books on the authority of Ibn Abbas ﷺ that when the Prophet ﷺ arrived Al-Madinah, he met people trading in As-Salaf (paying money in advance for specified goods to be delivered at an agreed time) with respect to farm produce for a year or two, he ﷺ said:



Whoever wants to trade in As-Salaf let him do it in a known measurement or a known weight, and for a specified period of time.

Ahmad and Al-Bukhari also recorded on the authority of AbdurRahman bin Abza and Abdullah bin Abi Aufa that both of them said: we used to obtain

some shares of booties from the Messenger of Allah ﷺ and some Arab of mixed race who were residents of Greater Syria would come and we would pay them some money in expectation of some wheat, barley, or oil from them over an agreed period of time. It was said to them, did they have farms or not? They answered: We never asked them about that. In the version of Ahmad and the Collectors of Sunan except At-Tirmidhi, they said: We did not see that with them.

As for the statement that only what has been agreed or the capital must be taken back, the proof for that is the hadith of Ibn Umar ﷺ recorded with Al-Daraqutni that the Messenger of Allah ﷺ said:

من أسلف شيئا فلا يشرط على صاحبه غير قضائه

Whoever does As-Salaf trade on any good should not give his business associate other condition except that which they agreed upon.

In another version, he ﷺ said:

من أسلف في شيء فلا يأخذ إلا ما أسلف فيه أو رأس ماله

Whoever does As-Salaf trade on any good should not obtain except that which is agreed upon, or his money.

As for the assertion that the buyer should not proceed with any action over the item under expectation until it is handed over to him, the proof for that is what was recorded by Abu Dawud on the authority of Abu Sa'id ﷺ that the Messenger of Allah ﷺ said:

من أسلم في شيء فلا يصرفه إلى غيره

Whoever does As-Salaf trade on any good should not spend or exchange for any other thing.

There is Attiyyah bin Said Al-Aufi in the chain, there are some ill comments against him.

The meaning however is that it is not permissible to change the specific good they agreed upon for another thing before taking it, as it is also not permissible to sell it before it is taken. The people of knowledge have differed as regard that matter.

باب القـرض

Chapter 10.5 Loaning

Al-Qard



It is obligatory that a similar amount borrowed be paid back. Moreover, it is permissible that what is taken back is better or much so far it is not an agreement. Giving a loan should not be used by the creditor as an opportunity to achieve benefits.

Explanation:

I say: As for the obligation of paying back a similar amount, this is because when there is an agreement that there should be addition to what is borrowed that becomes a riba. In fact there is a report indicating that when the creditor takes a gift from the debtor it becomes a riba, as recorded by Al-Bukhari on the authority of Abu Bardah bin Abi Musa ﴿ﷺ﴾ who said: I arrived Madinah and met Abdullah bin Salaam, he said to me: You have arrived a land where riba is rampant, so if you have a right to anything with anyone and he gives you a gift of a load of barley or wheat, never take it because that is riba.

As for the statement that it is permissible to pay a debt with what is better or much so far it is not an agreement, the proof for that is the hadith of Jabir ﴿ﷺ﴾ recorded in the Sahihayn; he ﴿ﷺ﴾ said: I went to the Messenger of Allah ﴿ﷺ﴾ and he owed me something, he paid me the credit and added to it.

It is also recorded in the Sahihayn on the authority of Abu Hurairah ﴿ﷺ﴾ who said: The Messenger of Allah ﴿ﷺ﴾ owned a man a one year old camel and he came asking for it, he ﴿ﷺ﴾ said: Find it for him. They searched for a one year old camel and they did not get any but got an older one. The Prophet ﴿ﷺ﴾ said to them: Give it to him, The man then said: You paid me well, may Allah reward you in manifold. The Messenger of Allah ﴿ﷺ﴾ then said: The best amongst you is he who pays debt with kindness.

Muslim and some others recorded the like of the hadith on the authority of Abu Rafi. The two hadith indicate the permissibility of paying a debt in a better way, as they also indicate that it is permissible to borrow animals. This is the view of the majority of the scholars. The Hadawis [and the Kufan scholars] say that is not permissible.

As for the statement that it is not permissible to let a debt bring extra benefit to the lender, the proof for that is the hadith of Anas ﴿ﷺ﴾ recorded with Ibn

Majah, that Ibn Umar ﷺ was asked regarding a man owing his brother some wealth and later made some gift to him, that could he accept the gift? [He ﷺ said] the Messenger of Allah ﷺ said:

إذا أقرض أحدكم قرضا فأهدي إليه حمله على الدابة فلا يركبها ولا يقبله إلا أن يكون جرى بينه وبينه قبل ذلك

When any of you lends money (to another) and the creditor makes a gift to him or wants to carry him on his mount, he should not climb the mount nor accept the gift except if they used to do that to one another before.

There is Yahya bin Abi Ishaq Al-Hunai in the chain; he is unknown. There is also in the chain Utbah bin Humayd Ad-Dabiyy, he was declared weak by Ahmad. The person he narrated from, Ismail bin Ayyash, is also weak.

Al-Bukhari did record in his Tarikh on the authority of Anas ﷺ that the Prophet ﷺ said:

إذا أقرض فلا يأخذ هدية

When a man ends another person some money, he should not take any gift from him.

Al-Bayhaqi also recorded, in his Sunan Kubra as a mawquf, on the authority of Ibn Mas'ud, Ubayy bin Kab, Abdullah bin Salaam and Ibn Abbas ﷺ said:

كل قرض جر منفعة فهو وجه من وجوه الربا

Every debt that brings an extra benefit is a form of riba.

Al-Bayhaqi also recorded what is similar in Al-Marifah on the authority of Fadalah bin Ubayd ﷺ, also as a mawquf.

What Al-Bukhari recorded on the authority of Abdullah bin Salaam ﷺ has proceeded.

Al-Harith bin Abi Usamah also recorded on the authority of Ali ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ forbade debt that brings extra benefit. In another version, he ﴿ﷺ﴾ said:

كل قرض جر منفعة فهو ربا

Every debt that brings an extra benefit is a riba.

There is Siwar bin Musab in the chain, he is an abandoned narrator. There are many other reports that give support to one another under the section.

باب الشفعة

Chapter 10.6 Ash-Shufah

Right of Preemption in Partnership Properties



What could only inform the right of pre-emption is co-ownership of a property, the right holds between the partners even if the property were to be a movable one. However, the right to Shufah[27] ceases the moment the property is shared. In Shufah, no partner is allowed to sell his portion of the property until he seeks the permission of his partners), this right is not nullified by [a partners] delay.

Explanation:

I say: As for the statement that what could only inform the right of pre-emption is co-ownership even if the property were to be a movable one, this is due to what is generally indicated in the Ahadith that have come over the issue; such as the hadith recorded on the authority of Jabir ﴿ﷺ﴾ in Al-Bukhari and some other books, that the Prophet ﴿ﷺ﴾ made a ruling regarding Ash-Shufah with respect to every unshared property, and that when portions of every partner are ascertained and byways clearly divided, there is no Shufah any longer.

The Collectors of Sunan also recorded the like of the hadith above. There is another hadith on the authority of Abu Hurairah ﴿ﷺ﴾ that the Messenger of Allah ﴿ﷺ﴾ said:



When the house is shared and ascertained, there is no Shufah anymore.

Abu Dawud and Ibn Majah recorded it with a sound of trustworthy men. Muslim and some others recorded on the authority of Jabir ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ ruled that there should be Shufah regarding all wealth that has not been shared by partners to it.

27 In the Shari'ah jurisprudence, this is an occurrence in a partnership business whereby if a party wants to sell his own portion of the partnership the best person to buy it is the other party, that however is if the property has not been shared, otherwise each of them would become free to transact in it as he wants.

Al-Bayhaqi also recorded on the authority of Ibn Abbas ﷺ back to the Messenger of Allah ﷺ that he said:

الشفعة في كل شيء

AshShufah applies to everything.

The men of the above chain are trustworthy except that it has been said to be faulty due to being a report whereby there is a cut between the Tabi that reported it and the Messenger of Allah ﷺ. At-Tahawi got a supportive hadith for it in the hadith of Jabir ﷺ, with a chain that has no problem.

As for the statement that sharing of the property removes the right of Shufah, this is due to what is explicitly mentioned in the Ahadith over the matter that it only applies to property that has not been shared. He ﷺ said:

فإذا وقعت الحدود وصرفت الطرق فلا شفعة

…when the property has been shared and (portions) clearly divided, there is no more Shufah.

The Ahadith saying Shufah absolutely applies to partnership (whether the property has been shared or not), such as this hadith:

الجارُ أحقُّ بصَقَبه

Al-Jar (a neighbour or partner) is more entitled to (buying) his partners portion.

The hadith above is recorded in the Sahihayn and some others but its ruling is limited by the condition mentioned in the other hadith, if the property has not been shared or divided, because the word Al-Jar contained in the hadith can mean either a close person or someone who mingles with one.

As for saying that the Shufah of the neighbourhood is conditioned by them

having a common road belonging to all as it has come in the hadith of Jabir ﷺ, recorded by Ahmad, Abu Dawud, Ibn Majah, and At-Tirmidhi who classified it as hasan, he reported that the Prophet ﷺ said:

الجار أحق بشفعة جاره ينتظر بها وإن كان غائبا إذا كان طريقهما واحدة

A neighbour is more entitled to (buying) his partners portion. The partner should wait for his neighbour even if he is absent, if their pathway is the same.

The hadith above gives support to what we have said earlier that Ash-Shufah is for no other than partners (those who have things in common); because the fact that their pathway is the same has informed that they are partners. Therefore, the independency of each of the neighbours (in terms of their buildings) cannot nullify the right to Shufah so far they share common pathway. The truth therefore is that the reason for Shufah is one, and that is partnership before the property is shared (not minding the size of the property).

Therefore, what is said that the reason for Shufah should be partnership on a pathway, or having neighbourhood to a river, or being neighbours to flowing river; all of these go back to the reason we mentioned. This is because partnership on the path of something or its process is the same as having partnership in a part of that thing. I have discussed this matter in a special work wherein I mentioned all the narrations that have come over the issue of Shufah; it is an excellent compilation. Whoever is interested should get it.

It is mentioned in Al-Bahr on the authority of Ali, Umar, Uthman, Said Ibn Al-Musayyab, Sulayman bin Yassar, Umar bin AbdilAziz, Rabiah, Malik Al-Shafi'i, Al-Auzai, Ahmad, Ishaq, Ubaydullaah bin alMuhsin, and the Imamis that no Shufah is possible except there is a partnership.

It is also reported from Al-Itrah (the scholars in the Household of the Prophet ﷺ), Abu Hanifah and his companions , Ath-Thauri, Ibn Abi Layla, and Ibn Sirin ﷺ that there can be Ash-Shufah by mere neighbourhood. They made evidence with the various Ahadith that have come about Shufah of neighbourhood.

As for the statement that it is not permissible for a partner to sell his portion of the property until he seeks the permission of his partners, the proof for that is the hadith of Jabir ﷺ recorded by Muslim ﷺ and some others that the Prophet ﷺ ruled that there is Shufah in all forms of partnership be it a house or garden that are not yet shared, and it is not permissible for a partner to sell

his portion until he seeks his partners permission, if he likes he takes it and if he doesn't he leaves it.

But if he sells it without seeking his partners permission, the partner has a right to revoke it.

As for the statement that the right to Shufah is not invalidated by a delay, the proof for that are the various Ahadith that have come over Ash-Shufah in the absolute terms.

However, what Ibn Majah recorded on the authority of Ibn Umar ﷺ in this wording:

لا شفعة لغائب ولا لصغير والشفعة كحل العقال

There is no right of Shufah for an absent person or a minor. Ash-Shufah is like when the rope tying a camel is loosened (and camel goes away).

There is Muhammad bin AbdurRahman bin As-Salmani in the chain; he is a very weak narrator. Abu Hayyan said: The hadith has no basis. Abu Zurah said: It is Munkar (contradictory to superior narrations). Al-Bayhaqi said: It is not authentic.

It should be noted that this false hadith cannot be supported with what was recorded in the statement of Shurayh ﷺ; there is no proof in it. This is because this hadith has come to claim three undue rulings: negation of Shufah for an absent person, a minor, and giving a consideration to lapse of time.

The apparent indications of the hadith respect to the first two rulings had been abandoned, and that is a good indication that the third ruling cannot be worked with were it not a false hadith.

باب الإجارة

Chapter 10.7 Rent and Hiring

Al-Ijarah



Hiring is permissible over any kind of job so far it is not prohibited under the Shari'ah. The wages must be well stated when entering into the labour agreement. If there is no well stated agreement, the labourer will be entitled to the worth of his labour as known with the people of that field. There is a prohibition regarding earning from blood cupping (Al-Hijamah), prostitution, soothsaying, arranged insemination (of animals), calling people to prayers, taking some wheat as a wage for milling some loads of wheat for someone. It is permissible to take wages for reciting the Qur'an but not for teaching it. It is also permissible to lease something out for a period of time over a well stated rent; like a farm land, but it should not be upon the condition that what comes out of it will be equally shared between the lessor and the lessee. Whoever destroys what he has been employed to look after or destroys what he rents will be liable for it.

Explanation:

I say: As for the statement that Ijarah can be carried out over any kind of job as far as it is not prohibited under the Shari'ah, this is because of the general purports of the proofs that have come regarding that. An example is the hadith of Abu Sa'id Al-Khudri ﷺ wherein he said the Messenger of Allah ﷺ forbade that a person should be hired for a task except after his wages has been made clear to him. Ahmad recorded the hadith, and the men of its chain are those of the Sahih. Al-Bayhaqi, Abdul Razzaq, Ishaq [in his musnad], and Abu Dawud in his marasil, so also An-Nasai in [the Book of] Az-Ziraah (in his Sunan) but not as a narration reported back to the Messenger of Allah ﷺ. The wording of some of the routes is as follows: Whoever engages someone in a job should pay him his wages.

Another proof is the absoluteness in the hadith of Abu Hurairah ﷺ as recorded with Al-Bukhari and Ahmad; Abu Hurairah ﷺ said, The Messenger of Allah ﷺ said:

يقول الله عز وجل ثلاثة أنا خصمهم يوم القيامة ومن كنت خصمه خصمته رجل أعطى بي ثم غدر ورجل باع حرا ثم أكل ثمنه ورجل أستأجر أجيرا فاستوفى منه ولم يوفه أجره

Allah The Almighty and Most Sublime says: I will dispute with three categories of people on the Day of Resurrection; and I will be an opponent to whomever I dispute with: someone who gives in My Name but later betrays, someone who sells a freeman in slavery and makes profits therein, and someone who employs a person for a job; and the work diligently done for him by the labourer but refuses to pay him his wages.

Indeed the Prophet ﷺ himself employed labourers, he employed a man from the tribe of Ad-Daleel when migrating from Makkah to Madinah as recorded by Al-Bukhari and some others, and as it has come in the hadith of Abu Hurairah رضي الله عنه with Al-Bukhari that he ﷺ said:

ما بعث الله نبيا إلا رعى الغنم

There was no Prophet sent by Allah except he tended a flock.

His Companions asked him, Did you ever tender a flock yourself?

He ﷺ said:

كنت أرعاها على قراريط لأهل مكة

I did that for the people of Makkah upon some coins.

Ahmad and the Collectors of Sunan among whom was At-Tirmidhi who classified the hadith as Sahih recorded in the hadith of Suwayd bin Qays, he said: Makramah Al-Abdi and I brought some textiles to Makkah from Hajar, the Messenger of Allah ﷺ was passing by, he priced some trousers from us and we agreed to sell for him. There was a man who used to measure for us, the Messenger of Allah ﷺ said to him: Measure it, and let us know the worth.

In this hadith the Prophet ﷺ did not mention to the Man who measured the cloth his wages, rather he gave him the like of what was usually paid in such a circumstance.

Also, the Companions used to employ one another in the time of the Prophet ﷺ for different kinds of jobs such that Ali bin Abi Talib ﷺ offered to fetch water for a woman, a bucket for a date. He ﷺ fetched sixteen buckets of water until his hands began to blister. The woman counted sixteen dates for him, he ﷺ went to the Prophet ﷺ and told him what had happened, then the Prophet ﷺ ate some of the dates with him.

The above report was recorded by Ahmad on the authority of Ali ﷺ with a good chain. Ibn Majah also recorded and authenticated it, so did Ibn As-Sakan. Al-Bayhaqi and Ibn Majah also recorded it on the authority of Ibn Abbas ﷺ that Ali ﷺ offered himself as a worker for a Jew in a job of fetching water with a date per bucket.

As for what can prevent a rent or hiring in a job under the Shari'ah, that will be mentioned soon.

As for the consideration that the wages should be well stated, the proof for that is the hadith of Abu Sa'id ﷺ that was earlier mentioned.

As for the statement that for the wages that were not well stated, the labourer will be entitled to the like of the worth of his labour (paid to the labourers in his class), the proof for that is the hadith of Suwayd Ibn Qays that was earlier mentioned; this is because doing that is what is closer to justice.

As for the prohibition of earning from cupping, prostitution, and soothsaying, the proof for that is the hadith of Abu Hurairah ﷺ that the Prophet ﷺ forbade earning from cupping, prostitution, and dog sale. Ahmad recorded the hadith; the men of its chain are authentic. At-Tabarani also recorded it in Al-Awsat. What is similar to the hadith is also recorded on the authority of Rafi bin Khadij ﷺ, recorded by Ahmad, Abu Dawud, An-Nasai, and At-Tirmidhi who classified it as authentic. The hadith is also in Sahih Muslim ﷺ.

In the Sahihayn and some other works on the authority of Abu Masud Al-Badri, the Prophet ﷺ forbade earning from dog sale, prostitution, and soothsaying. We have talked about earning from dog sale and arranged insemination under the section of transactions. Earning from prostitution is what a prostitute takes for the illicit affair, while earning from soothsaying is what a soothsayer earns from the act of soothsaying.

Some scholars of hadith made evidence with this hadith for the prohibition of earning from cupping.

Several Ahadith have come with the same meaning as from the hadith of the

prohibition of earning from cupping. Even some of the Ahadith have stated that such earnings are filthy, while some of them stated that the earning is unlawful.

But the view of the majority of the scholars is earning from cupping is halal due to what has come in the hadith of Anas bin Malik ﷺ as recorded in the Sahihayn and some other works that the Prophet ﷺ was cupped by Abu Tayyibah and he gave him two Sa of food, he also talked to his masters to be lenient with him (as regard his servitude under them).

Also in the Sahihayn on the authority of Ibn Abbas, the Prophet ﷺ was cupped and he gave the cupper his wages.

Had cupping been a forbidden job, the Messenger of Allah ﷺ would not have paid for it.

But the proper combination from these Ahadith is to say that the job of cupping is discouraged not forbidden; and that an encouragement from the Messenger of Allah ﷺ for Muslims to go after more honourable jobs.

A supportive proof to that is the hadith of Muhayyisah bin Masud recorded by Ahmad, Abu Dawud, At-Tirmidhi, and Ibn Majah with an authentic chain. Muhayyisah had a slave boy who was a cupper; the Prophet ﷺ prevented him from earning from the job (through his slave).

He asked: Can I feed my orphans with it?

He ﷺ said, No.

He asked again: Can I spend it as a charity?

He ﷺ said, No.

The Prophet ﷺ later permitted him to feed his beasts with it. Had the earning been forbidden, he ﷺ would not have asked him to feed his beasts with it.

It can also be derived from the hadith that the fact that the Messenger of Allah ﷺ paid the cupper does necessarily mean that he could eat from it or feed his family with it, rather eating from it may be discouraged for them; this way, the Ahadith will not seem conflicting with one another. Thus, earning from it can only be a discouraged act while descrIbng it as an unlawful and filthy job can only be a way of scaring people away from the job, or it can be a prevention form taking the job as a profession just in the manner he did with Muhayyisah, and the permission he gave to it can be in the manner he later did with him.

As for receiving payment for calling to prayers [that is, being a muadhin], the proof for the prohibition is the hadith of Ubadah bin As-Samit ﷺ that the Prophet ﷺ said to Uthman bin AbilAas:

وأتخذ مؤذنا لايأخذ على آذانه أجرا

Get a caller that will not receive payment for his Adhan.

In another narration:

لا تتخذوا مؤذنا يأخذ على أذانه أجرا

Do not get a muadhin that will receive payment for his Adhan.

The hadith above is in the Sahih Collection[28].

As for the prohibition of taking some wheat as a wage for milling some loads of wheat, the proof for that is the hadith of Abu Sa'id ﷺ that the Prophet ﷺ forbade using wheat to pay for milling. Al-Daraqutni and Al-Bayhaqi recorded the hadith, but there is Hisham, Abu Kulayb, in the chain, it is said that he is unknown. Ibn Hibban mentioned him in Ath-Thiqat; Maghlata said he is trustworthy.

It is said that the act is when someone mills for another and takes his wages from the wheat milled, and some said the prohibition is when an unmeasured quantity of grains is milled and the wages are taken from it, (probably because it will be difficult to make justice in this case).

As for the permissibility of receiving payment for reciting the Qur'an but not on teaching it, the proof for that is the hadith of Ibn Abbas ﷺ recorded with Al-Bukhari and some others that a group of Companions of the Prophet ﷺ were on journey and they passed a place wherein there was someone who had been stung. One of the people of the place enquired if there was someone who could recite over a man who had been stung. So one of them went and recited the Opening Chapter but on the condition that he would be paid a sheep. He brought the sheep to the rest of the people but they saw what he did as being reprehensible. They said: You received a payment over the Book of Allah. So

28 The author may Allah bestow mercy on him made a mistake regarding this hadith, it is a report of Uthman bin AbilAas directly from the Prophet ﷺ and not through Ubadah bin As-Samit may Allah be pleased with both of them. Also, it is recorded in the Sahih, it is only recorded by the Collectors of Sunnan. (Editor)

when they all got to Madinah, they informed the Messenger of Allah ﷺ of what occurred, he ﷺ said:

إن أحق ما أخذتم عليه أجرا كتاب الله

Verily, what you are more entitled to take payment for is the Book of Allah.

In another version on the authority of Abu Sa'id ﷺ, the Prophet ﷺ said:

أصبتم أقسموا واضربوا لي معكم سهما

What you did is correct; share it and give me a portion from it[29].

After that, the Messenger of Allah ﷺ laughed.

The hadith can be found in the Sahihayn with various wordings.

So also is hadith of Kharijah bin As-Salt from his uncle wherein a ruqyah (lawful incantation) was made on a mad man by recitation of Surah Al-Fatihah, and the Messenger of Allah ﷺ said:

خذها فلعمري من أكل برقية باطل فقد أكلت برقية حق

Accept it; undoubtedly (it is severe) that someone has eaten from a false ruqyah, you have eaten from a true ruqyah.

Ahmad, Abu Dawud and An-Nasai recorded the hadith.

As for the statement that it is not permissible to receive a payment for teaching the Qur'an, the proof for that is the hadith of Ubayy bin Kab ﷺ who said:

29 It is said that the Prophet ﷺ asked them to give him from the animal so that they could be very sure that the act was right and be free to eat from it themselves after their disagreement with respect to its permissibility. (Editor)

I taught a man the Qur'an and he gave me a bow as a gift, I informed it to the Prophet ﷺ, he said:

إن أخذتها أخذت قوسا من نار

If you accept it, you have accepted a bow from the Hell.

Ubayy رضي الله عنه said: I thereby returned the bow to the man.

Ibn Majah and Al-Bayhaqi recorded the hadith. It was said the hadith is defective due to a cut in its chain; but some scholars provided answer for that. Yet another fault was found in it, that there are some unknown narrators in the chain. Meanwhile, there is a supportive evidence for it in a hadith recorded by At-Tabarani on the authority of At-Tufayl bin Amr Ad-Dausi who said, Ubayy bin Kab taught me the Qur'an, I then gave him a bow as a gift. He went to the Prophet ﷺ with the bow on his neck. The Prophet ﷺ told him: You have tied something from the hellfire on your neck.

That it is prohibited to take payment for teaching the Qur'an is what is understood from the hadith of AbdurRahman bin Shibl رضي الله عنه; he mentioned that the Prophet ﷺ said:

اقرأوا القرآن ولاتغلوا فيه ولا تجفوا عنه ولا تأكلوا به ولاتستكثروا به

Recite the Qur'an and do not exceed the boundaries therein, and do not shun it, or eat through it, or seek surplus with it.

Ahmad recorded the hadith and the men of its chain are good reporters. Al-Bazzar also recorded; there are also some supportive chains for it. We also have the hadith of Imran bin Husayn رضي الله عنه that the Prophet ﷺ said:

اقرأو القرآن واسألوا الله به فإن من بعدكم قوما يقرأون القرآن يسألون الناس به

Recite the Qur'an and ask Allah with it, verily, some people will come after you who would recite the Qur'an but ask people with it.

Ahmad and At-Tirmidhi recorded the hadith above; the latter graded it as sound[30].

There are some other Ahadith in the section. However, the perspective from which the prohibition of taking payment for teaching the Qur'an has come is that teaching the Qur'an is a form of disseminating or teaching the Islamic principles and ruling, which is a compulsory act that are not supposed to be paid for.

Among the people of knowledge who are of the opinion that it is prohibited to take payment for teaching the Qur'an are: Ahmad ibn Hanbal and his companions, Abu Hanifah, and the Hadawis. Ata, Ad-Dahak, Az-Zuhri, Ishaq, and Abdullah bin Shaqiq are also of that view ﷺ.

As for the statement that it is permissible to lease something out for a well stated amount, the proof for that is what has been reported regarding leasing lands during the time of the Messenger of Allah ﷺ. An example of this is the hadith of Rafi bin Khadij ﷺ as recorded in the Sahihayn, he said: We had much of the fields among the Ansar, so we used to lease our land upon the condition that we would have the produce of a portion and they of another portion. It used to occur that a portion would produce crops while the other would not, so the Messenger of Allah ﷺ forbade us from that. As for leasing the land upon cash agreement, he ﷺ did not forbid us from that.

In the version of Muslim and some others, he ﷺ said:

فأما شيء معلوم مضمون فلا بأس به

As for anything that is well known and can be ensured, there is no problem with it.

All other things also take the ruling applied to lands.

As for the statement that it is not permissible to lease out a field upon an agreement of sharing what comes out from it equally between the lessor and the

30 The last two narrations are weak, therefore cannot stand as proofs under the section. Scholars from the various known school of thoughts have spoken about this issue in a more detailed manner; summarily taking payment for teaching the Qur'an or any other acts that are done primarily for Allah's sake can be allowed with the conditions elaborately stated because of some other evidences that seem to allow that. (Editor)

lessee, be it dates or any other type of crop, the proofs for that are the Ahadith that have come that the Prophet ﷺ agreed with the [Jews] of Khaybar (after its conquest) that they would share equally its dates and crops. These Ahadith despite being in the Sahihayn and some others, the ruling had been abrogated by the like of the hadith of Rafi bin Khadij ﷺ mentioned earlier. So also were Ahadith that have similar purports to the hadith of Rafi bin Khadij ﷺ.

There are differences among the scholars about the issue because of the conflicting evidences, so also there are different juristic conclusions. I have explained all that in Sharh Al-Muntaqa, and another special compilation about the issue.

Among the Ahadith that have come clearly regarding the prohibition of the act is the hadith of Jabir ﷺ recorded with Muslim and others, he said: We used to lease out farm lands in the time of the Prophet ﷺ and we would meet some leftover corns on the ears from various plants, the Prophet ﷺ said regarding that:

من كان له أرض فليزرعها أو ليحثرها أخاه وإلا فليدعها

Whoever has a land should plant it or allow his brother to plough it, otherwise he should leave it.

So also is the hadith of Sa'd ibn Abi Waqqas ﷺ that he ﷺ forbade them from leasing a land for that purpose. He said: If you want to lease a land for gold or silver you can do so.

Ahmad, Abu Dawud, and An-Nasai recorded the hadith; the men of its chain are good.

There is a similar hadith to the hadith of Jabir ﷺ in the Sahihayn on the authority of Abu Hurairah ﷺ.[31]

As for the statement that whoever destroys what he has been employed to look after or destroys what he rents will be liable for it, the proof for that is the hadith below:

31 As mentioned by the author ﷺ, scholars differ over this issue. However, the most correct opinion and which is held by the majority of the scholars is that it is permissible to lease out properties, be it land or other properties, this way. For instance, Al-Imam Al-Nawawi in Sharh Muslim (10/196207) arrived at this conclusion after collecting all the narrations regarding the issue and critically looked into them. (Editor).

على اليد ما أخذت حتى تؤديه

The responsibility is upon the hand that has taken something until it is returned.

Ahmad, Abu Dawud, Ibn Majah, At-Tirmidhi, and Al-Hakim who classified it as authentic recorded the hadith. This is a hadith reported by Al-Hasan from Samurah ﷺ. There is a lengthy discussion over whether Al-Hasan heard the narrations from Samurah or not.

Meanwhile, what is intended in the hadith is that anyone who took a rent will be responsible for it until he returns it.

Abu Dawud, An-Nasai, Ibn Majah, and Al-Bazzar recorded on the authority of Amr bin Shuayb from his father, who also reported from his father may Allah be pleased with them from the Prophet ﷺ that he said:

من تطبب ولم يعلم منه طب فهو ضامن

Whoever treats anyone in the name of having the knowledge of medicine while he is not known to have been trained for it, he will be liable for any injury caused.

An-Nasai recorded the hadith in both a connected and disconnected form. In support of that is the hadith of AbdulAziz bin Umar bin AbdulAziz ﷺ who said: One of the people from the delegation that visited my father told me that the Messenger of Allah ﷺ said:

أيما طبيب تطبب على قوم لا يعرف له تطبب قبل ذلك فأعنت فهو ضامن

Whoever carries out an act of medicine over a people whereas he is not known to have learnt medicine before that and thereby causes any injury, he will be liable for it.

Abu Dawud recorded the hadith.

A quack medical practitioner will be liable for the injury caused or any casualty made because he attended to the sick person without possessing the knowledge in the field he claimed to belong as the experts in that field. Thus, he must be held responsible for it.

This rule applies to everyone who takes a job he is not good at and thereby spoils it; he will be responsible for the damage. So also, anyone who hires an animal for a ride from a place to another and then rides it roughly, which thereby causes the death of the animal; the person must be held responsible for it.

باب الإحياء و الإقطاع

Chapter 10.8 Land Ownership and Allotments of Lands

Whoever precedes others to a free land is more entitled to it; he will be the owner. The ruler can allot for whomever he wishes any portion of a dead land, or any mineral or any water source.

Explanation:

I say: As for the statement that whoever precedes others to a land is more entitled to it, the proof for that is the hadith of Jabir ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ said:

من أحيا أرض ميتة فهي له

Whoever prepares a free land becomes its owner.

Ahmad, An-Nasai, At-Tirmidhi and Ibn Hibban who authenticated it recorded it. There is another version that goes thus:

من أحاط حائطا على أرض فهي له

Whoever makes a wall round a land becomes its owner.

Ahmad and Abu Dawud recorded it. Ahmad, Abu Dawud, At-Tabarani, Al-Bayhaqi and Ibn Al-Jarud who authenticated it also recorded another hadith from Al-Hasan on the authority of Samurah back to the Messenger of Allah ﴿ﷺ﴾ that he ﴿ﷺ﴾ said:

من أحاط حائطا على أرض فهي له

Whoever makes a fence round a land becomes its owner.

Ahmad, Abu Dawud, At-Tirmidhi who classified it as hasan and An-Nasai recorded another hadith on the authority of Saeed bin Zayd, he said, the Messenger of Allah ﷺ said:

مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ وَلَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ

Whoever prepares a free land becomes its owner; an unjust race does have a right to right to it.

Al-Bukhari and some others reported from the hadith of 'A'ishah رضي الله عنها, she said, the Messenger of Allah ﷺ said:

من أعمر أرضا ليست لأحد فهو أحق بها

Whoever occupies a land that does not belong to anyone becomes its owner.

Abu Dawud also recorded on the authority of Asmar bin Mudharis رضي الله عنه who said, I came to the Prophet ﷺ and paid oath of allegiance to him, the Prophet ﷺ said: Whoever precedes others to what no Muslim had taken of land, he becomes the owner of the place. Then people began to make boundaries over lands to indicate who had preceded others to them.

Ad-Diya authenticated the hadith in Al-Mukhtarah.

As for the statement that it is permissible for the ruler to allot free lands, mineral and water sources (to people), the proof for that is what has come in the Sahihayn on the authority of Asma bint Abi Bakr رضي الله عنها that she used to carry kernels from the farm of Az-Zubayr رضي الله عنه which the Messenger of Allah ﷺ allotted to him.

Ahmad and Abu Dawud recorded on the authority of Ibn Umar ﷺ that the Prophet ﷺ allotted some pieces of lands to Az-Zubayr, the distance covered by his horse together with distance covered by his whip he threw, he then said: Take the portion covered by it.

There is Abdullah bin Umar bin Hafs in the chain of the hadith, there are some ill comments against him.

Meanwhile, it was recorded that the Messenger of Allah ﷺ allotted some lands to Wail bin Hujr ﷺ in Hadramawt, as was recorded by At-Tirmidhi, Abu Dawud, Ibn Hibban, At-Tabarani and Ibn Al-Mundhir with a sound chain. At-Tirmidhi said the chain is authentic.

Ahmad also recorded on the authority of Urwah bin Az-Zubayr ﷺ that AbdurRahman bin Auf ﷺ said: The Prophet ﷺ and Umar allotted suchandsuch lands to me.

Al-Bukhari and others also recorded on the authority of Anas ﷺ that Messenger of Allah called the Ansaris and told them that he ﷺ would allot the lands at Bahrain to them, they replied: O Messenger of Allah, if you will do that, then do the same for our brothers from the Quraysh. There was no such with the Prophet ﷺ, he then said: You will witness some preferential treatment after my demise, so be patient until you will meet me.

Ahmad and Abu Dawud recorded on the authority of Ibn Abbas ﷺ who said: The Prophet ﷺ allotted some mineral resources of Qabl the highland and the lowland to Bilal bin Al-Harith Al-Muzani.

The above hadith was also recorded in the hadith of Amr bin Auf Al-Muzani.

At-Tirmidhi, Abu Dawud and An-Nasai recorded a hadith declared authentic by Ibn Hibban and sound by At-Tirmidhi, the hadith of Abyadh bin Hamaal ﷺ who came visiting the Prophet (as someone who just accepted Islam), and he asked the Prophet ﷺ to make an allotment of salt (ground) for him and did so, when he turned to leave, a man in the sitting said to him, Do you know what you have allotted to him? An everlasting wealth so he withdrew it from him.

There are other Ahadith in the section.

باب الشركة

Chapter 10.9 Joint Business/ Partnership

Ash-Sharikah

People have equal right to water, fire and pasture. If people who are all entitled to a water source differ regarding it, the closest person to the source is more entitled to it; he will withhold it until it reaches ankle level and then releases it to others. It is however not permissible to withhold excess water in order to prevent (animals from grazing) the pastures. The authority of a place can preserve some places for grazing of the livestock against the time of necessity. People can enter into partnership regarding raw cash and businesses, and share the profit upon mutual consent. It is also permissible to carry out al-mudarabah business with their jointly owned wealth so far the kind of the business is not forbidden. When people dispute regarding the sizes of their plots beside one another, they should leave seven cubits in between. A neighbour should not prevent his neighbour from placing plank by his wall. There should be neither any harm nor any reciprocation of harm between the partners. Whoever causes difficulty to his partner will be punished by the authority; the authority can pull out his tree or dispose his house.

Explanation:

I say: As for the statement, that people have equal right to water, fire and pasture, the proof for that is the hadith of Abu Khidash from one of the Companions of the Prophet ﷺ who said, the Messenger of Allah said:

المسلمون شركاء في ثلاث الماء والنار و الكلأ

Muslims have equal right to three things: water, fire, and pasture.

Ahmad and Abu Dawud recorded the hadith. Abu Nuaym recorded it in As-Sahabah while discussing the biography of Abu Khidash, and he did not mention the man (that is, the Companion). Abu Hatim was asked about him, he said: Abu Khidash never met the Prophet ﷺ. Ibn Hajar said: The chain of the hadith contains trustworthy men. Ibn Majah also recorded the hadith

on the authority of Ibn Abbas ﷺ, but there is Abdullah bin Kharash in the chain; he is an abandoned narrator. Meanwhile Ibn As-Sakan did declare the hadith authentic. Ibn Majah

also recorded it on the authority of Abu Hurairah ﷺ that the Prophet ﷺ said:

لا يمنع الماء و النار و الكلأ

Water, fire and pastures are not to be prevented from the people.

Ibn Hajar said: The chain of the hadith is Sahih.

Al-Khatib also recorded on the authority of Ibn Umar ﷺ a similar hadith to the one mentioned in the chapter, but there is an addition:

و الملح

...and salt.

However, there is AbdulHakim bin Maysarah in the chain.

At-Tabarani also recorded with a sound chain on the authority of Zayd bin Jubayr from Abdullah bin Umar ﷺ, yet he had another route.

Abu Dawud also recorded in the hadith of Buhaysah from his father. Ibn Majah also recorded another hadith on the authority of 'A'ishah ﷺ, O Messenger of Allah, what is it that is not permissible to be withheld? He ﷺ said: Salt, water and fire. The chain of the hadith is weak. At-Tabarani also recorded it on the authority of Anas ﷺ in this wording:

خصلتان لا يحل منعهما الماء و النار

Two things; it is prohibited to withhold them: water and fire.

Al-Uqayli recorded it on the authority of Abdullah bin Sarjas.

There are several other Ahadith in the section; they give support to one another.

The Ijma that has come has indeed limited the general meaning of the hadith, and the Ijma is: water stored in ones jar is ones possession.

As for the statement that the person that is more entitled to the water is the closest person while others follow in the sequence, the proof for that is the hadith of Amr bin Shuayb from his father, who also reported from his father ﴿ﷺ﴾, that the Prophet ﴿ﷺ﴾ gave a rule concerning running water, that it should only be withheld until it reaches ankle level, the person withholding it should then release it for the people below. Abu Dawud and Ibn Majah recorded the hadith. Ibn Hajar ﴿ﷺ﴾ said in Al-Fath: The chain is sound.

Al-Hakim also recorded in his Mustadarak on the authority of 'A'ishah ﴿ﷺ﴾ and declared authentic by him but At-Tabarani found fault in it saying it is rather a report falling back to a Companion that is, it is a mawquf.

Abu Dawud and Ibn Majah recorded the hadith on the authority of Thalabah bin Malik ﴿ﷺ﴾. Abdul Razzaq also recorded it on the authority of Abu Hatim Al-Quradhi from his father then from his grandfather ﴿ﷺ﴾.

Ibn Majah, Al-Bayhaqi, and At-Tabarani also recorded on the authority of Ubadah ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ ruled regarding irrigating date palm with running water, that the closest people should irrigate first and later allow it to flow; the people on the upper coast can withhold it till ankle level until it goes round all the gardens or exhausted.

The Ahadith in the section are sufficient as proofs.

As for the statement that it is not permissible to prevent excess water in order to prevent animals from grazing from the pastures, the proof for that is the hadith recorded on the authority of Abu Hurairah ﴿ﷺ﴾ as found in the Sahihayn and some other collections, from the Prophet ﴿ﷺ﴾ that he said:

لا تمنعوا فضل الماء لتمنعوا الكلأ

Do not withhold the excess water in order to prevent pastures.

In the version of Muslim, he ﴿ﷺ﴾ said:

لا يباع فضل الماء ليباع به الكلأ

Excess water is not to be sold so as to sell pastures.

In another version of Al-Bukhari, he ﷺ said:

لا تبيعوا فضل الماء لتمنعوا به الكلأ

Do not sell excess water in order to prevent from grazing the pastures.

There are other Ahadith in the section.

In the version of Ahmad, on the authority of Abu Hurairah رضي الله عنه, he ﷺ said:

و لا يمنع فضل ماء بعد أن يستغنى عنه

Excess water should not be withheld when one is no more in need.

As for the statement that an authority of a place can preserve some places for grazing of the livestock against the time of necessity, the proof for that is the hadith of Ibn Umar رضي الله عنه recorded by Ahmad and Ibn Hibban that the Prophet ﷺ preserve An-Naqi for grazing of the Muslims horses.

Ahmad, Abu Dawud, and Al-Hakim reported it on the authority of As-Sad bin Jathamah with the addition:

لاحمى إلا لله و رسوله

There is no preserve land except for Allah and His Messenger.

This addition can be found in Sahih Al-Bukhari, it is mentioned therein that the Prophet ﷺ preserved Al-Naqi while Umar ﷺ preserved Ash-Sharafah and Ar-Rabadha.

As for the statement that it is permissible to partner in raw cash and businesses, the proof for that is the hadith of As-Saib bin Abi Saib ﷺ that he said to the Prophet ﷺ: You were my best partner in the time of Jahiliyyah, you were the best of partners; you would neither deceive nor trick me. Abu Dawud, Ibn Majah, An-Nasai and Al-Hakim recorded it, and the latter declared it authentic.

In the version of Abu Dawud and Ibn Majah, As-Saib Al-Makhzumi was a partner to Prophet ﷺ before he was raised as a Prophet; he came and met the Messenger of Allah ﷺ on the day of Conquest of Makkah, he said: Welcome to my brother and partner (in business), who does not deceive or argue.

The hadith has some other routes apart from the above.

Al-Bukhari recorded on the authority of Abu Al-Minhal that Zayd bin Arqam and Al-Bara bin Aazib ﷺ were partners (in business), so they bought some silver with cash and some on credit (Nasiah); the Prophet ﷺ was asked about it, he said:

ما كان يدا بيد فخذوه و ما كان نسيئة فردوه

Whatever is bought hand-to-hand, take it, but what's bought on credit return.[32]

Ahmad, An-Nasai and Ibn Majah recorded on the authority of Ibn Mas'ud ﷺ that he said: Ammar, Sad, and I partnered over what was our share on the Day of Badr, then came Sad with two captives while Ammar and I did not have any captive.

There is a disconnection in the hadith above.

Ahmad and Abu Dawud recorded on the authority of Ruwayfi bin Thabit ﷺ who said: During the time of the Messenger of Allah ﷺ, perhaps someone might collect cash from his brother for him half of his share of the booties. It might occur that one would have arrow tips and plume, while another person might have arrow shafts.

Al-Daraqutni and Al-Bayhaqi recorded it.

32 They were asked to return the silver bought on credit because it is an exchange of money for money. In this form of business, two conditions must be met: 1) the exchange must be hand-to-hand, and 2) there must be uniformity in the value of the currencies. (Editor)

As for the statement that it is permissible to engage in al-mudarabah, the proof for that is what was mentioned from Hakim bin Hizam ﷺ that whenever he gave money to anyone for a partnership business, he would always give conditions that: the person must not invest his money on animals, or travel with it on the sea, or enter with it through valleys; that if he does any of that, he will be liable for any loss incurred.

It has been said there is no authentic report from the Messenger of Allah ﷺ regarding al-mudarabah, that it was only the Companions that engaged in the kind of the transaction after him ﷺ such as Hakim, as mentioned above. Ali ﷺ was reported to have done it too, as Abdul Razzaq recorded it. Al-Shafi'i ﷺ also recorded that Ibn Mas'ud ﷺ too did it. So also were Al-Abbas and Jabir may Allah be pleased with both as recorded by Al-Bayhaqi. Malik in Al-Muwataa, Al-Shafi'i and Al-Daraqutni also recorded that Abu Musa did it. Al-Shafi'i ﷺ also recorded that Umar ﷺ did it. Al-Bayhaqi had another report regarding Uthman ﷺ, that he did it too.

There is a hadith back to the Messenger of Allah ﷺ, that he ﷺ said:

ثلاث فيهن البركة البيع إلى أجل والمقارضة وإخلاط البر بالشعير للبيت لا للبيع

Three things are full of blessings: a transaction on credit, taking money for business, and mixing wheat with barley for domestic purpose not for transaction.

The chain of the hadith above contains two unknown narrators.

As for the statement that when the partners differ as to the width of a road, that seven cubits are what to be left in between, the proof for that is the hadith of Abu Hurairah ﷺ as recorded in the Sahihayn and some other works that the Prophet ﷺ said:

إذا اختلفتم في الطريق فاجعلوه سبعة أذرع

When you differ regarding the (width) of a road, then make it seven cubits.

Abdullah bin Ahmad ﷺ recorded a report with similar meaning in the musnad; so also At-Tabarani on the authority Ubadah bin As-Samit ﷺ.

Abdul Razzaq recorded it as well on the authority of Ibn Abbas ﷺ. It is also recorded by Ibn.

Adiyy on the authority Anas ﷺ.

As for the statement that a neighbour should not prevent a fellow neighbour from placing a wood on his wall, the proof for that is the hadith of Abu Hurairah ﷺ recorded in the Sahihayn and others that the Prophet ﷺ said:

لا يمنع جار جاره أن يغرز خشبة في جداره

A neighbour should not prevent his neighbour from placing a wood on his wall.

Ahmad, Ibn Majah and Al-Bayhaqi recorded similar reports from a number of the Companions.

As for the statement that should be neither any harm nor any reciprocation of harm between the partners, the proof for that is he hadith of Ibn Abbas ﷺ who said: the Messenger of Allah ﷺ said:

لا ضرر ولا ضرار وللرجل أن يضع خشبة في حائط جاره وإذا اختلفتم في الطريق فاجعلوه سبعة أذرع

There should be no harm or reciprocation of harm; a man can place plank by his neighbours fence but when you differ about the road way, make it seven cubits.

Ahmad, Ibn Majah, Al-Bayhaqi, At-Tabarani and Abdul Razzaq recorded it.

Ibn Kathir ﷺ said: There should neither be a harm nor reciprocation of harm; Ibn Majah recorded it on the authority Ubadah bin As-Samit ﷺ; it was recorded on the authority Ibn Abbas ﷺ and Abu Sa'id Al-Khudri ﷺ. The hadith is popular. End of quote.

Hadith of Ibn Abbas that was earlier mentioned under the section and that of Ubadah bin AsSamit ﷺ was also recorded by Al-Bayhaqi. Ibn Majah, Al-Daraqutni, Al-Hakim, and Al-Bayhaqi also recorded it. At-Tabarani recorded in his Al-Kabir so also Abu Nuaym the same hadith but on the authority Thalabah bin Malik al-Quradhi.

As for the statement that the authority can punish a partner who harm his

partner with asking him to remove his tree or dispose his house, the proof for that is the hadith of Samurah bin Jundab ﷺ who had the upper arm of his date palm fell in the garden of an Ansar neighbour, the man used to have his family with him, and Samurah used to enter the garden often and often such that he used to cause inconvenience to the man. So the man asked Samurah to cut off the arm but he refused. The matter was taken to the Prophet ﷺ who also asked him to sell the tree, yet he refused. He also asked him to transfer it but that was of no success. Then he said: Give me as a gift and you will have such and such rewards, he ﷺ made the offer to entice him. Yet he did not budge. The Messenger of Allah ﷺ then said: You have caused harm, [he then told the man from Ansar], Go and cut off.

The report came via Jafar bin Muhammad then his father then from Samurah. The father of Jafar however did not hear narrations from Samurah.

Al-Muhibb At-Tabari recorded in Ahadith Al-Ahkam on the authority Wasi bin Hibban he said: Abu Lubabah had a bunch (of dates) in the garden of a man so they spoke. Then he mentioned the like of the hadith of Samurah.

باب الرهن

Chapter 10.10 Mortgage Loan

Ar-Rahn



It is permissible to mortgage a debt; the mortgagee can benefit from the mortgage, a ride can be ridden and animal milked but on his expenses. A mortgage should not be locked up.

Explanation:

I say: Ar-Rahn is permissible by the consensus of the Muslims. The Noble Book has spoken about it. However, that the journey is mentioned as a condition for it in the Qur'an is just a reference to a common phenomenon as opined by the majority of the scholars.

Mujahid, Ad-Dahak and the Dhahiris said mortgaging in transactions is not legally permissible except on journeys. Meanwhile it is on record that the Prophet ﷺ mortgaged his armour with a Jew in Madinah upon some barley he took from him for his family as was recorded by Al-Bukhari and some others on the authority Anas ﷺ. The hadith is also recorded in the Sahihayn on the authority 'A'ishah ﷺ. Ahmad, At-Tirmidhi , An-Nasai and Ibn Majah also recorded it on the authority Ibn Abbas ﷺ. At-Tirmidhi said the hadith is authentic, so also the author of alIqtirah.

The hadith indicates the permissibility of mortgaging not only on journey as opined by the majority of the people of knowledge.

As for the statement that a ride given as mortgage could be ridden and an animal could be milked, the proof for that is the hadith of Abu Hurairah ﷺ recorded by Al-Bukhari and some others that the Prophet ﷺ used to say:

الظهر يركب بنفقته إذا كان مرهونا ولبن الدر يشرب بنفقته إذا كان مرهونا وعلى الذي يركب ويشرب النفقة

A mount given as a mortgage can be ridden but has to be taken care of and the milk of a nursing animal can be drunk if given as a mortgage, but has to be taken care of as well. The responsibility of the care is upon the one who rides and drinks.

There are several versions for the hadith, and what is intended from that is that a mortgagee can make use of the mortgage but he has to take care of it. That is the view of Ahmad, Ishaq, Al-Layth and Al-Hasan and others.

Al-Shafi'i, Abu Hanifah, Malik and the majority of the scholars say the mortgagee cannot benefit from the item of the mortgage rather all the benefits go back to the mortgagor and he takes care of it.

They said the hadith is contradictory to Al-Qiyas (analogy). The answer to that is that such a Qiyas is void; it is based on an undetermined brink of a precipice ready to crumble down.

It is also not appropriate to cite a proof from what has come on the prohibition of milking someone's animal without his consent as recorded by Al-Bukhari and some others because there is a principle of jurisprudence that says a general rule is not to be refuted by a specific one rather a specific rule is to be built over a general rule.

As for the statement that it is not permissible to close the door against a mortgage, the proof for that is the hadith of Abu Hurairah ﷺ that the Prophet ﷺ said:

لا يغلق الرهن من صاحبه الذي رهنه له غنمه وعليه غرمه

A mortgage is not to be locked against the owner of the property who gave it as a mortgage; the gain and profit is his.

Al-Shafi'i, Al-Daraqutni, Al-Hakim, Al-Bayhaqi, Ibn Hibban in his Sahih; Al-Daraqutni graded its chain as hasan. Ibn Hajar said in Bulughul Maram: the men of its chain are trustworthy except that the most correct narration is recorded with Abu Dawud and some others, which is mursal (unconnected).

Ibn Majah recorded it with another route, and the report that has as a connected chain has it as an addition; it has been reported in an acceptable manner.

What is intended with locking up here is when the mortgagee claims that the property is his right such that he prevents the mortgagor from having an access to it at the agreed time.

Abdul Razzaq recorded from Mamar that he explains locking up of a mortgage to mean when a man says: If I do not return your money, the mortgage becomes yours. He [Abdul Razzaq] said: I was later informed from him (that is, Mamar)

that he said: If the mortgage spoils, the right of the mortgagee does not cease exist, the mortgagor bear all the risks, the gain and loss, regarding the property.

It was said that in Jahiliyyah, the mortgagee would become the owner of the mortgage when the mortgagor cannot redeem his property and after the lapse of the agreed time for the repayment of the debt. The Shari'ah later came to destroy such an arrangement.

Gain and loss, here, are more general in outlook than what has been said above, that the animal given as a mortgage can be ridden by the mortgagee and milk of the animal be drunk while he takes care of the item.

باب الوديعه والعارية

Chapter 10.11 Trust and Loan in Necessity

Al-Wadi'ah and Al-'Aariyah



It is compulsory that a trustee or a borrower ensures that the trust is rendered back to the one who has entrusted him. A trustee should not betray even someone who has once betrayed him. He will not be responsible for any damage or destruction if he has not contributed to it or being deceptive. People are not to be denied of utensils, like buckets, pots, etc. In addition, it is not permissible to arrange insemination of animals, prevent someone in need of milk from milking, or prevent someone from loading ones mounts while heading out in the course of Allah.

Explanation:

I say: As for the statement that it is obligatory on a trustee or a borrower to render the trust, the proof for that is the Word of Allah that goes thus:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَن تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا

Verily! Allah commands that you should render back the trusts to those whom they are due... [An-Nisa: 58].

Another proof is the statement of the Messenger of Allah ﷺ that goes thus:

أد الأمانة إلى من ائتمنك ولا تخن من خانك

Render the trust to whomever has entrusted you, do not deceive in retaliation.

Abu Dawud and At-Tirmidhi recorded the hadith. Al-Hakim said it is hasan. He also graded the version from Abu Hurairah ﷺ as sahih. However, there

is Talq bin Ghana from Sharik in its chain. Al-Hakim got a supportive hadith for it; the hadith of Abu At-Tayah from Anas ﷺ, there is also Ayyub bin Suwayd in that chain, scholars differ upon him. Besides that, he singly reported the hadith in question as mentioned by At-Tabarani. Ibn AlJauzi said in Al=Ilal Al-Mutanahiyyah on the authority Ubayy bin Kaab ﷺ, a hadith that also contains an unknown narrator. Al-Daraqutni also recorded it on the authority of Ubayy bin kaab ﷺ. Al-Bayhaqi and At-Tabarani also recorded on the authority of a man among the

Companions; there is also an unknown narrator in its chain besides the Companion whose name was not mentioned.

As for the statement that there is no compensation due from a borrower when he unknowingly destroys the actual material he has borrowed, or the trust, the proof for that is the hadith of Amr bin Shuayb from his father then from his grandfather ﷺ that the Prophet ﷺ said:

لا ضمان على مؤتمن

There is no liability over a trustworthy person (when he accidentally destroys the trust kept with him).

Al-Daraqutni recorded it; there is some weakness in its chain.

There is a consensus over the fact a trustee will not answer for the loss over the trust kept with him except if it is established that he is contributory to the loss or damage, the proof for that is what Al-Daraqutni recorded in the hadith mentioned shortly, in another route, in this version:

ليس على المستعير غير المغل ضمان ولا المستودع غير المغل ضمان

There is no liability over a borrower who is not crafty, neither is there any over a trustee.

That a borrower who is not a criminal or deceptive will not answer for the loss of what he has borrowed is the opinion of the (scholars of the) Household, Hanafis, and Malikis.

Meanwhile, it is reported in Al-Fath that the majority of the scholars are of the view that a borrower will be responsible for any loss or damage caused to the item borrowed, except if the damage or loss occurred in a way he can be pardoned.

Ahmad, Abu Dawud, At-Tirmidhi, Ibn Majah and Al-Hakim [who classified it as sahih] recorded a hadith on the authority Al-Hasan from Samurah from the Prophet ﷺ that he ﷺ said:

على اليد ما أخذت حتى تؤديه

The hand that borrows an item is liable until he returns it.

That whether or not Al-Hasan heard narrations from Samurah is a big matter.

Ahmad, Abu Dawud, An-Nasai and Al-Hakim on the authority of Safwan bin Umayyah that the Prophet ﷺ borrowed an armour from him on the Day of Hunayn, he said: Is it a confiscation, O Muhammad? The Messenger of Allah ﷺ replied: No, it is borrowed on a guarantee.

As for the statement that it is not permissible to deny people items like buckets and pots, the proof for that is the hadith of Ibn Mas'ud who said: In the time of the Prophet ﷺ, we used to see buckets and pots as items people commonly borrow from one another. Abu Dawud recorded it and Al-Mundhiri graded it as hasan.

It was also reported from Ibn Mas'ud and Ibn Abbas that both of them gave the meaning of Allah's Word and [they] refuse [Al-Maun: 7] as domestic items that people are usually in need of, such as an axe, buckets, ropes and pots.

It was reported from 'A'ishah ﷺ that she said Al-Maun is water, fire and salt.

Yet there is another view that says Al-Maun is Zakat.

As for the statement that it is not permissible to deny people from bringing their female animals to ones male animals for mating, or prevent them from milking ones cattle for drinking, or loading on ones ride when going out in the course of Allah, the proof for that is what Muslim ﷺ and some others recorded on the authority of Jabir from the Prophet ﷺ that he said:

ما من صاحب إبل ولا بقر ولا غنم لا يؤدي حقها إلا أقعد لها يوم القيامة بقاع قرقرة تطؤه ذات الظلف بظلفها وتنطحه ذات القرن بقرنها قلنا يارسول الله وما حقها؟ قال: إطراق فحلها وإعارة دلوها ومنحتها وحلبها على الماء وحمل عليها في سبيل الله.

No owner of camel, cow or sheep will fail to give their rights except that the animals would await him on the Day of Resurrection rumbling, those with hooves would descend on him, matching him, while those with horns knocking him.

The Companions asked: What are their rights?

He ﷺ said: Allowing their female to have free access to their female, allowing the cattle to fetch water for whoever is in need, giving out the dues in their respect, so also allowing them to be milked while drinking in the river, and allowing them to be used in the course of Allah.

باب الغصب

Chapter 10.12 Seizing Peoples Property

Al-Ghasb



Whoever seizes another persons property is a sinner. He must return whatever he has seized. It is not permissible for a Muslim to take the wealth of another Muslim except by his permission. The sweat of an oppressor does not attract any compensation. Whoever plants on another persons land without his permission has no right to what he has planted. So also, whoever plants a tree on another persons land should remove it. It is not permissible to make any benefit from a seized property; whoever destroys or damages a seized property must produce the like back or its worth.

Explanation:

I say: As for the assertion that whoever seizes another persons property is a sinner that is because he has eaten the persons property unlawfully and as well oppressed him. Allah the Almighty said:

...and eat up not one another's property unjustly (such as stealing, robbing, deceiving, etc.) [An-Nisa: 188].

He ﷻ also said:

لا يحل مال امريء مسلم إلا بطيبة من نفسه

It is not permissible to eat the wealth of Muslim except with his permission.

Al-Daraqutni recorded the hadith with many routes from Anas ﷺ back to the Messenger of Allah ﷺ. There is some weakness in the chains of the hadith.

Ahmad and Al-Daraqutni also recorded it on the authority of Abu Hurrah ArRaqashi from his uncle; there is Ali bin Zayd bin Judan in the chain, there are some comments against him.

Al-Hakim also recorded it on the authority of Ibn Abbas ﷺ. So also Al-Daraqutni from Ibn Abbas ﷺ in another route. Al-Bayhaqi, Ibn Hibban, and Al-Hakim also recorded it in their Sahih Collections on the authority of Abu Humayd As-Saidi. Ahmad, Abu Dawud, and At-Tirmidhi who classified it as hasan did record on the authority of As-Saib bin Yazid from his father that the Messenger of Allah ﷺ said:

لا يأخذن أحدكم متاع أخيه جادا ولا لاعبا وإذا أخذ أحدكم عصا أخيه فليردها عليه

No one should take his brothers property whether earnestly or jokingly. If anyone were to take his brothers rod he should return it to him.

So also is this hadith:

إنما أموالكم ودماؤكم عليكم حرام

Indeed your wealth and blood are sacred among yourselves.

The hadith above is well established in the Sahihayn and some other collections. The hadith thus indicates the consensus with all the Muslims that seizure of properties of others is prohibited, that whatever is seized must be returned to its owner he still has it, or replace it if it is no more.

As for the statement that the sweat of an oppressor is not to be compensated, the proof for that is the hadith of Rafi bin Khadij ﷺ that the Prophet ﷺ said:

من زرع في أرض قوم بغير إذنهم فليس له من الزرع شيء وله نفقته

Whoever plants on other peoples farm without their permission will have nothing of the harvest, but would take back his expenses.

Ahmad, Abu Dawud, Ibn Majah, At-Tirmidhi, Al-Bayhaqi, At-Tabarani, Ibn

Abi Shaybah, At-Tayalisi and Abu Yala recorded it. Al-Bukhari graded it as hasan.

As for the statement that a tree planted in the above circumstance must be removed, the proof for that is what is recorded by Abu Dawud and Al-Daraqutni on the authority of Urwah bin Az-Zubayr ﴿ﷺ﴾ that the Messenger of Allah ﴿ﷺ﴾ said:

من أحيا أرضا فهي له وليس لعرق ظالم حق

Whoever revives a land becomes its owner; an oppressor will not reap the sweat of his labour.

He [Urwah] said: The person who narrated this hadith to me told me that two men took their matter to the Messenger of Allah ﴿ﷺ﴾; one of them had planted a date palm on the land of the other, the the Messenger of Allah ﴿ﷺ﴾ ruled that owner of the land take his land, and that the person who had planted a date palm remove it. He [Urwah] said: Indeed I saw the date palm being cut with axe into its root. It was a massive date palm.

Ahmad, Abu Dawud, At-Tirmidhi [who classified it as hasan], An-Nasai and Al-Bukhari [in a suspended chain] recorded on the authority of Said bin Zayd ﴿ﷺ﴾ who said, the Messenger of Allah ﴿ﷺ﴾ said:

من أحيا أرضا ميتة فهي له وليس لعرق ظالم حق

Whoever revives a dead land becomes its owner; an oppressor will not reap the sweat of his labour.

As for the statement that it is not permissible to make any benefit from a seized property, the proof for that is what has been mentioned in the proofs declaring that it is not permissible to eat another persons wealth whether the real wealth or any other form of benefit unlawfully.

Several Ahadith have come upon the impermissibility of seizing any land not for the purpose of planting or otherwise. An example of such is the hadith of 'A'ishah ﴿ﷺ﴾ recorded in the Sahihayn and other collections that the Prophet ﴿ﷺ﴾ said:

من ظلم شبرا من الأرض طوقه الله من سبع أرضين

Whoever takes a palms length of land unlawfully, Allah will wrap him in the seven land [on the Day of Resurrection].

There is a like of the hadith also in the Sahihayn on the authority of Abu Sa'id Al-Khudri.

There is another one in Al-Bukhari on the authority of Ibn Umar may Allah be pleased with them. So also in Muslim on the authority of Abu Hurairah ﷺ.

As for the statement that whoever destroys another persons property must pay for it or give its worth, the proof for that is the hadith of 'A'ishah ﷺ that when she broke the vessel of Safiyyah ﷺ with which she brought some food for the Prophet ﷺ, the Messenger of Allah ﷺ said:

إناء كإناء وطعام كطعام

The vessel must be replaced as the one broken so also the food wasted.

Ahmad, Abu Dawud, and An-Nasai recorded it. Al-Hafidh ﷺ said it is hasan in Al-Fath. Al-Bukhari and some others collectors recorded the like of the hadith on the authority of Anas ﷺ that the Messenger of Allah ﷺ was with one of his wives, then one of the mothers of the believers (his wives ﷺ) sent with her servant a plate of food to him ﷺ, so she (the one he ﷺ was in her apartment) struck the plate, the plate fell and broke. The Prophet ﷺ arranged it and packed the food inside. He ﷺ said the companions with him: Eat, and he gave the servant another plate (from the wife who has the apartment) and kept the broken one for her.

In the version of At-Tirmidhi, he recorded: One of the wives of the Prophet ﷺ sent some food to the him in a plate, 'A'ishah ﷺ struck the plate; the food fell and the plate got broken, then the Messenger of Allah ﷺ said: Food is for food and plate is for plate.

The hadith above has been cited to say that when a valuable material is (unjustly) destroyed, there must be a payment for it. The worth of the material would not be taken except when it is very difficult to get the like of the material destroyed. That is the view of Ash-Shaafii and the Kufan scholars.

Malik ﴿رحمه الله﴾ said: A valuable item can be replaced with its worth absolutely. That is also the views of the Hadawiyyah.

Some said there is no difference in that the kind of something is its like, and it has been reported from the hadith of Musaarah in the Sahih a camel kept in order have its udders filled with milk that a Sa of dates will be given back for the milk that is milked.

باب العتق

Chapter 10.13 Manumission of Slaves

Al-Itq



The best of the slaves that can be manumitted is the most valuable (in the market). A slave can be freed upon the agreement that he will become a servant of his manumitter or what is similar (as an agreement). Whoever has a kinsman as a slave under him should manumit him. Whoever maltreats his slave should free him otherwise the authority should do so. Whoever frees a slave jointly owned must pay his partners their share after the estimation otherwise he should just free his own portion from the slave, and the slave would be asked to strive in the other portion. It is not permissible to make a condition of al-Wala except for the person who frees the slave. It is permissible to do al-Tadbir regarding a slave which means freeing a slave upon ones death, but if the owner [before his death] becomes in need, he can sell such a slave. Al-Mukatabah is permissible with respect to ones slave upon some money the slave will use to buy himself out of the slavery such that he will become a freeman when he completes the payment. He will become free from slavery according to the amount he can pay to his master but when he becomes incapable of paying the money required in al-Mukatabah he goes back into slavery. Whoever gets a child from his slave girl is no allowed to sell such a slave girl, and when the master dies she becomes a freewoman or when he decides to free her.

Explanation:

I say: Enjoinment towards freeing slaves is established from the Messenger of Allah ﷺ in many of his authentic Ahadith such as the hadith recorded on the authority of Abu Hurairah رضي الله عنه in the Sahihayn and some other collections that the Prophet ﷺ said:

من أعتق رقبة مسلمة أعتق الله بكل عضو منها عضوا منه من النار حتى فرجه بفرجه

Whoever frees a Muslim slave, Allah will save every one of his limbs from hell with every limb of the slave up to his genital with the slaves genital.

At-Tirmidhi recorded and declared as sahih the hadith of Abu Umamah and some others among the Companions that the Prophet ﷺ said:

أيما امرئ مسلم أعتق امرءا مسلما كان فكاكة من النار يجزي بكل عضو منها عضوا منه

Whoever among the Muslims frees a Muslim slave will have him as his shield from the Hellfire. With every limb of the slave, all his own limbs too will be saved from the Hellfire.

In another version, he ﷺ said:

وأيما امرأة مسلمة اعتقت امرأة مسلمة كانت فكاكها من النار تجزي بكل عضو من أعضائها عضو من أعضائها

Whoever among the Muslim women frees a Muslim female slave will her as her shield from the Hellfire. With every limb of the slave, all her own limbs too will be saved from the Hellfire.

The chain of the above hadith is sahih.

There are many other Ahadith in the section.

In the Sahihayn on the authority of Abu Dharr ﷺ, he said: I said, O Messenger of Allah, which of the acts is more meritorious? He ﷺ replied:

الإيمان بالله والجهاد في سبيل الله

Belief in Allah and Jihad in the path of Allah.

He said: I said: what kind of slave manumission is better?

He ﷺ said:

أنفسها عند أهلها وأكثرها ثمنا

The one that is most valuable by his master and his price is higher.

As for the statement that it is permissible to free a slave upon an agreement that he will become the servant of the person that has freed him, the proof for that is he hadith of Safinah bin AbdurRahman ﴿رضي الله عنه﴾ who said: Umm Salamah freed me upon the agreement I would serve the Prophet ﴿ﷺ﴾ in as much as I live.

Ahmad, Abu Dawud, An-Nasai and Ibn Majah recorded the hadith. Ibn Majah said: There is no problem with its chain.

Al-Hakim also recorded it but there is Said bin Jahman Abu Hafs Al-Aslami in the chain; Ibn Main and others said he is trustworthy. Abu Hatim said: His hadith is not to be cited as a proof.

The fact from the hadith is that what happened could not have been hidden from the Prophet ﴿ﷺ﴾.

It is said that the consensus permits such a condition upon freeing a slave.

As for the statement that whoever has a member of his family as a slave under him must free him, the proof for that is he hadith of Samurah ﴿رضي الله عنه﴾ as recorded with Ahmad, Abu Dawud, At-Tirmidhi and Ibn Majah that the Prophet ﴿ﷺ﴾ said:

من ملك ذا رحم محرم فهو حر

Whoever possesses a member of his family as a slave should consider him a free person.

In the version of Ahmad, he ﴿ﷺ﴾ said:

...a person out of slavery.

The above narration is among what Al-Hasan ﴿رحمه الله﴾ reported from Samurah ﴿رضي الله عنه﴾, there is a known difference as to whether Al-Hasan heard narrations from Samurah or not. Ali bin Al-Madini ﴿رحمه الله﴾ said: The hadith is contradictory to a more authentic one. Al-Bukhari said: The hadith is not authentic.

An-Nasai, At-Tirmidhi, Ibn Majah and Al-Hakim recorded on the authority of Ibn Umar that the Messenger of Allah ﴿ﷺ﴾ said

من ملك ذا رحم محرم فهو حر

Whoever possesses a member of his family as a slave should consider him a free person.

This is a narration of Damurah from [Sufyan] Ath-Thauri ﴿رحمه الله﴾ then from Abdullah bin Dinar ﴿رحمه الله﴾. An-Nasai said: The hadith is munkar, we are not aware of any other narrator who has narrated from Sufyan except Damurah. At-Tirmidhi said: Damurah bin Rabiah has no supportive narrations over this hadith.

Meanwhile, Yahya bin Main and others held him to be trustworthy. His hadith can be found in the Sahihayn. In fact, this hadith in question was graded authentic by Ibn Hazm, AbdulHaqq and Ibn AlQattan ﴿رحمهم الله﴾.

Abu Dawud and An-Nasai recorded from Umar bin Al-Khattab ﴿رضي الله عنه﴾, as his statement, the like of the hadith of Samurah, that report is from the narrations of Qatadah who did not hear any narrations from him (Samurah).

That whoever has a family member as a slave under him must free him is the opinion of many people of knowledge among the Companions and the Followers. That is also the view of Abu Hanifah and his followers, so also was Ahmad. Al-Shafi'i and a number of other scholars are of the view that only children, fathers, and mothers can be freed by one another. Malik added that brothers too could be freed.

Hadith recorded on the authority of Abu Hurairah ﴿رضي الله عنه﴾ does not contradict this conclusion; the hadith recorded by Muslim and some others that the Messenger of Allah ﴿ﷺ﴾ said:

لاَ يَجْزِى وَلَدٌ وَالِدًا إِلاَّ أَنْ يَجِدَهُ مَمْلُوكًا فَيَشْتَرِيَهُ فَيُعْتِقَهُ

A fathers goodness to his son cannot be compensated except if the son should find his father a slave, buy him over, and set him free.

This is because the occurrence of manumission with an emphasis does not negate its occurrence by possession.

The Dhahiris cling to this hadith of Abu Hurairah ﷺ and they say none should manumit another person.

As for the statement that whoever maltreats his slave to the extent of inflicting an injury on him should free him, the proof for that is the hadith of Ibn Umar ﷺ recorded in Muslim ﷺ and some other collections wherein he [Ibn Umar] said: I heard the Messenger of Allah ﷺ said:

من لطم مملوكه أو ضربه فكفارته أن يعتقه

Whoever slaps or beats his slave, the expiation for that is that he should free him.

It is also recorded in Muslim on the authority of Suwayd bin Muqarrin ﷺ who said: We the clan of Muqarrin in the time of the Messenger of Allah ﷺ had no servant except one, then one of us beat him one day and the information got to the Prophet ﷺ, he ﷺ said: Free her.

In another narration, he ﷺ said: When her masters become well off, they should let her go.

There is another narration in Muslim from the hadith of Abu Masud Al-Badri ﷺ who said: I was whipping a slave then I heard a voice behind me; it was the Messenger of Allah ﷺ saying:

إن الله أقدر منك على هذا الغلام

Allah is indeed has more power over you than you are to this slave.

When Abu Masud ﷺ heard that from the Messenger of Allah ﷺ, he said: I set him free seeking with that the Pleasure of Allah. The Messenger of Allah ﷺ then said:

لو لم تفعل للفحتك النار أو لمستك النار

If you have not done so, you would have been touched by the fire.

As for the statement that the authority can release a slave (under someone), the proof for that is the hadith of Amr bin Shuayb from his father, who also reported from his father ﷺ regarding a slave whose genitals was cut off by his master. The Messenger of Allah ﷺ said: Bring me the man. When he was brought, the Messenger of Allah ﷺ said to him: Go, you are set free.

Abu Dawud and Ibn Majah recorded the hadith. Ahmad too recorded it but there is Al-Hajjaj bin Artaah in the chain; he is a trustworthy narrator but he is a mudalis. The other men in the chain of Ahmad are trustworthy. At-Tabarani also recorded it.

The author of Al-Bahr recorded from Ali, Al-Hadi, Al-Muayyidbillah, Shafiis, Hanafis that a slave cannot be freed just because his master inflicts an injury on him, rather his master could be commanded to free him, then if he refuses, the ruler will come in.

Malik, Al-Layth, Al-Awzai and Dawud said: The master is not to be commanded; the slave will become free the moment his master maltreats him.

Al-Nawawi said in Sharh Muslim: Scholars agree that such act of manumission is not obligatory (upon the master), it is only recommended, and should it be carried out in the hope of expiation and removal of the sin of the severe beating. One of their proofs is the permission granted by the Messenger of Allah ﷺ that they should continue to benefit from the slave girl that was beaten by one of [Banu Muqarrin] as has been cited.

The claim that there is a consensus over that (as said by Al-Nawawi) is not correct. In addition, the fact the Messenger of Allah ﷺ gave those people the permission to continue to benefit from her does not indicate non obligation of freeing her. What is known is that a command can indicate an obligation of what is commanded. The permission therefore indicates the obligation of freeing her but until when they would be well off.

As for the statement that whoever frees his portion in a slave must may for the other portion, the proof for that is the hadith of Ibn Umar ﷺ as recorded in the Sahihayn and other collections that the Prophet ﷺ said:

من اعتق شركا له في عبد وكان له مال يبلغ ثمن العبد قوم العبد
عليه قيمة عدل فأعطى شركاءه حصصهم وعتق عليه العبد وإلا
فقد عتق عليه ما عتق

Whoever frees his portion in a slave jointly owned and has money with which he can pay for other portion belonging to his partners, the value of the other portion should be estimated and should give it to them, the slave is freed thereof, otherwise he will be regarded as having freed his portion alone in the slave (so the slave will remain in slavery).

In the addition of Al-Daraqutni, He will remain a slave in what remains (of the worth).

Ahmad, An-Nasai and Ibn Majah recorded on the authority of Abu Al-Mulih from his father then from his grandfather that a man from his tribe freed his portion in a slave and the matter was taken to the Prophet ﷺ who ruled that the man should free the slave with all his wealth. He ﷺ said:

ليس لله عز وجل شريك

Allah The Almighty and Most Sublime has no partner.

Also in the Sahihayn on the authority of Abu Hurairah رضي الله عنه the Prophet ﷺ said:

من أعتق شقصا من مملوك فعليه خلاصه في ماله فإن لم يكن له مال قوم المملوك قيمة عدل ثم استسعى في نصيب الذي لم يعتق غير مشقوق عليه

Whoever frees his portion of servitude in a slave, he should free him totally with his wealth. If he does not have the money to free him totally, the value of the slave will be justly estimated and the slave will be asked to provide for the portion left without being constricted.

There is no negation between this hadith and the hadith of Ibn Umar رضي الله عنه rather it is possible to merge the two this way: that whoever frees his portion in the servitude of a slave and does not have the money with which he can free him totality, he will be considered to have only freed his portion, the portion of his partners will remain with the slave, if the slave decides to make effort towards freeing himself (perhaps by al-mukatabah) then he can become free, otherwise he will be regarded as being partly freed.

Ahmad recorded a hadith on the authority of Ismail bin Umayyah from his father, who also reported from his father, that they had a slave boy whose name was Tuhman or Zakwan, so his grandfather freed a half of him, the slave then went to tell the Prophet ﷺ, and he ﷺ told him:

تعتق في عتقك وترق في رقك

A portion of your being a slave has been freed yet remains the other portion.

The man served his (other) master until he died.

The men of the chain are trustworthy; At-Tabarani recorded it.

As for the statement that it is not permissible to make a right of allegiance (wala) for other than the person who frees a slave, the proof for that is the hadith of 'A'ishah ﷺ as recorded in the Sahihayn and some other collections that Barirah ﷺ came seeking her help to pay for her to be released from slavery having made agreement with her master to bail out herself, she was however unable to pay any of the money her master demanded, 'A'ishah ﷺ said: Go back to your people, if they agree that I pay for you and I will have the right of allegiance (wala) on you I will pay. Barirah ﷺ went and told her master about what 'A'ishah said, they said: If she can do that and we still have the right of wala, she can. 'A'ishah ﷺ mentioned that to the Messenger of Allah ﷺ, and he ﷺ said:

ابتاعي فأعتقي فإنما الولاء لمن أعتق

Pay for her and free her, the right of wala is for the person who frees the slave.

The Messenger of Allah ﷺ then address people and said:

ما بال أناس يشترطون شروطا ليست في كتاب الله من اشترط شرط ليس في كتاب الله فليس له وإن شرطه مائة مرة شرط الله أحق وأوثق

What is the matter with some people who give conditions that are not stated in the Book of Allah? Whoever gives a condition not stated in the Book of Allah will have nothing thereof, even if it were a hundred conditions. It is Allah's stipulated conditions that are more rightful and better.

The hadith has several other routes.

As for the statement that it is permissible for a master to put the condition of setting his slave free at his death, but that he can however sell him before his death when he becomes in need, the proof for that is the hadith of Jabir ﷺ recorded in the Sahihayn and some other collections that a man said his slave would become a free man after his demise and the man later became in need, the Prophet ﷺ took the slave and said: Who will buy him from me? Nuaym bin Abdillah ﷺ bought him with such-and-such amount, he ﷺ gave the man the money.

Al-Bayhaqi also recorded in the hadith of Ibn Umar back to the Messenger of Allah ﷺ and as a mawquf in this wording:

المدبر من الثلث

A slave can be freed upon the condition of the death only from onethird of the wealth of his master.

Al-Daraqutni recorded it in this wording:

المدبر لا يباع ولا يوهب وهو حر من الثلث

A slave to be freed upon his masters death is not to be sold nor given as a gift; he should be freed from one third of the wealth.

There is Abidah bin Hassan in the chain; his hadith used to contradict more superior Ahadith.

Al-Shafi'i and some people of hadith are of the view that it is permissible to sell a mudabbar (a slave to be freed after his masters death) when there is a need. Al-Bayhaqi also recorded in al-marifah that this is the view of the majority of

the jurists, which is also the view of the Hadawis, Al-Qasim, Al-Muayyidbillah, Abu Talib as said by the author of Al-Bahr.

Al-Nawawi ﷺ reported from the majority of the scholars that it is not permissible to sell a mudabbar.

As for the statement that the slave can enter into a written agreement with his master that he will pay him to free himself from slavery, the proof for that is the Word of Allah the Almighty:

"...and such of your slaves as seek a writing (of emancipation)..." [An Nur: 33].

Al-mukatabah was a practice in Jahiliyyah; but Islam allowed it. I am not aware of any contrary opinion.

As for the statement that a slave in al-mukatabah will become free when he pays the agreed amount or will be considered free according to what he has paid of the money, the proof for that is he hadith of Ibn Abbas ﷺ from the Prophet ﷺ that he said:

يؤدي المكاتب بحصة ما أدى دية الحر وما بقي دية العبد

A mukatabah (a slave who has a written agreement of payment) can pay partly, what he has given will be considered the diyyah[33] of his free portion (if he were to be killed), and whatever remains, the diyyah of his slave portion.

Ahmad, Abu Dawud, An-Nasai and At-Tirmidhi recorded it. Ahmad and Abu Dawud recorded in the hadith of Ali ﷺ.

This is the view of some people of knowledge. Some other scholars are of the view that the rule that applies to a mukatab is the same as that of a (complete) slave, until he pays the money agreed upon with his master. Their proof is the hadith of Amr bin Shuayb from his father, who also reported from his father ﷺ that the Prophet ﷺ said:

أيما عبد كوتب بمائة أوقية فأداها إلا عشرا أوقيات فهو رقيق

33 Blood money

Any slave whom agreement is made with to pay a sum of hundred uqiyyah to set himself free but pays it except a sum of ten uqiyyah only, will still remain a slave.

Ahmad, Abu Dawud, Ibn Majah, At-Tirmidhi and Al-Hakim [who classified it as sahih] recorded it.

In the version of Abu Dawud, he ﷺ said:

المكاتب عبد ما بقي عليه من مكاتبة درهم

A mukatabah slave remains a slave so far as he still has a dirham to pay his master.

There is no contradiction between the two narrations and the one earlier mentioned they could be merged by saying that the two later hadith refers to the ruling of things that cannot be shared; in that case, he will be considered a slave.

It has also come in the hadith of Umm Salamah رضي الله عنها that the Prophet ﷺ said:

إذا كان لإحداكن مكاتب وكان عنده ما يؤدي فلتحتجب منه

When any of you women has a male mukatib and has what he can pay to free himself from slavery, let her veil herself from him.

Ahmad, Abu Dawud, Ibn Majah, and At-Tirmidhi [who classed it as sahih] recorded it.

In the hadith before, the Messenger of Allah ﷺ established it that a mukatib has become a freeman because it is permissible for male slave to look at his mistress as Allah said:

...the (male) slaves whom their right hands possess... [An-Nur: 31].

As for the statement that he will go back to slavery when he fails to pay up his money in mukatabah, this is because it is considered that the owner does not have anything in place of his freedom. Therefore, when there is no payment,

there cannot be freedom. It was after Barirah ﷺ paid her masters the fee agreed upon that 'A'ishah ﷺ could have her, as earlier mentioned.

As for the statement that whoever gets a baby from his slave girl cannot sell her, the proof for that is the hadith of Ibn Abbas that the Prophet ﷺ said:

من وطئ أمته فولدت له فهي معتقة عن دبر منه

Whoever an affair with his slave girl and she bears a child for him, she will become a free person the moment the man dies.

Ahmad, Abu Dawud, Ibn Majah and Al-Bayhaqi recorded the hadith above. There is Al-Husayn bin Abdillah Al-Hashimi; he is a weak narrator. Ibn Majah also recorded it from the hadith of Ibn Abbas ﷺ who said: the mother of Ibrahim (the son of the Prophet ﷺ) was mentioned in the presence of the Prophet ﷺ, he then said:

أعتقها ولدها

Her son has liberated her.

Al-Daraqutni also recorded it; there is Al-Husayn bin Abdillah Al-Hashimi in the chain; he is a weak narrator as mentioned earlier. Al-Daraqutni and Al-Bayhaqi also recorded on the authority of Ibn Abbas ﷺ that The slave mother of ones child becomes a free person even if what she gave birth to is a stillbirth.

The chain of that hadith is also weak.

Al-Bayhaqi also recorded in the hadith of Ibn Laiah from Ubaydullaah bin Abi Jafar that the Messenger of Allah ﷺ said to the Mother of Ibrahim: Your son liberated you.

There are two successive cuts in the chain of the hadith. Ibn Hazm ﷺ said: The hadith is authentic, the men of its chain are trustworthy, on the authority of Ibn Abbas ﷺ .

Ibn Umar also reported from the Prophet ﷺ that he forbade that slave mothers should be sold, he ﷺ said:

لايبعن ولا يوهبن ولا يورثن يستمتع بها السيد مادام حيا وإذا مات فهي حرة

They should not be sold nor given as gifts nor inherited; his master will continue to enjoy her so far he lives, when he dies she becomes free.

Malik also recorded that in Al-Muwataa so also Al-Daraqutni as the statement of Ibn Umar.

Al-Bayhaqi recorded it as connected report to the Messenger of Allah ﷺ, so also as a mawquf (the statement of a companion). All these Ahadith, even though there are some weaknesses in their chains, are sufficient as proofs. That is the view of the majority of the scholars. However, some scholars have a contrary opinion, that it is permissible to sell them. They hold to the hadith of Jabir ﷺ who said:

كنا نبيع سرارينا أمهات أولادنا على عهد رسول الله صلى الله عليه وسلم وأبي بكر فلما كان عمر نهانا فانتهينا

We used to sell slave mothers of our children in the time of the Messenger of Allah ﷺ and Abu Bakr, but when it was the reign of Umar, he stopped us and stopped doing so.

Abu Dawud, Ibn Majah, Al-Bayhaqi, and Ibn Hibban recorded the hadith, but there is no indication that Prophet ﷺ was aware of their act. The difference of opinions over the matter from among the Sahabah to those after them is well known.

As for the statement that a female slave will become free when her master who has got baby from her dies, the proof for that is the hadith earlier mentioned. She will be considered free after his death.

As for the statement that she can become free before the death of her master who has baby from her if he chooses to do so, this is because the acceptance of a master to set a slave free is enough to make him a free man, not to talk of when there is a reason for his freedom, especially when the Messenger of Allah ﷺ has said concerning a slave mother: Your son liberated you. This statement

indicates that there had been freedom as a result of her giving birth to a child, but there remains with the master some rights that will make the woman still remain in the capacity of a slave until he will die. However, the moment he makes a choice to free her, he has given his consent over that.

باب الوقف

Chapter 10.14 Endowment

Al-Waqf



Whoever leaves his property in the path of Allah such a property becomes a reserved property, or he can decide to leave all the profit accruing from a property to be expended on any lawful project so far it is an act of closeness to Allah. The person manages the property can eat from it as necessary. The person who gave the property can also act as the manager like the rest of the Muslims with respect. Whoever makes a waqf of something that can hinder his heir will not have it void. Whoever leaves any wealth in a masjid or any religious institution such that there is none to benefit from it; such wealth can be spent over the people in need, and can be spent in meeting the general needs of the Muslims. Examples of such wealth is what is kept in the Kaabah and in the Prophets Masjid ﷺ. Any waqf made over graves in order to raise their status or to beautify them, or any waqf such as will promote what is evil, is null.

Explanation:.

I say: It is the view of the majority of the scholars that waqf is legal and necessary in the Deen. At-Tirmidhi ﷺ said, We are not aware of any difference of opinions among the Companions and the people of knowledge of the earlier generations regarding the fact that waqf of lands is permissible.

There is a report credited to Shurayh that he said al-Waqf is not permissible. Abu Hanifah ﷺ too said al-Waqf is not necessary. Meanwhile, all his companions opposed the opinion except Zufar. At-Tahawi ﷺ reported the statement of Abu Yusuf ﷺ, he said: had Abu Hanifah ﷺ aware of the proof for al-waqf, he would have said it is permissible. AlQurtubi ﷺ said: Whoever rejects the permissibility of al-Waqf is rejecting the Ijma, therefore such will not be considered.

Among the proofs indicating the correctness and necessity of al-Waqf is the hadith of Abu Hurairah ﷺ recorded with Muslim and some other collectors that the Prophet ﷺ said:

إذا مات الإنسان انقطع عمله إلا من ثلاثة أشياء صدقة جارية أو علم ينتفع به أو ولد صالح يدعوا له

When a human being dies, all of his deeds will be cut off except from three things: a flowing (everlasting) charity, a benefiting knowledge, or a righteous son supplicating for him.

Also in the Sahihayn on the authority of Ibn Umar ﷺ, he reported that Umar ﷺ got a land in Khaybar and said: O Messenger of Allah, I got a land in Khaybar; I have never got any wealth as splendid as it is, what advice would you give me? He ﷺ said:

إن شئت حبست أصلها وتصدقت بها

If you like you can grant it for a charity purpose.

Thereafter, Umar ﷺ gave it as a charity with the condition that it should neither be sold, nor gifted out, or inherited; [it is] for the needy, the close relations, manumission of slaves, taking care of visitors and for the wayfarers; there is no blame upon the person managing it to eat from it reasonably, without making wealth with it.

An-Nasai, At-Tirmidhi who said it is hasan , and Al-Bukhari, in a suspended chain, on the authority of Uthman ﷺ that the Prophet ﷺ arrived in Madinah and there was no potable water for people except the Well of Rumah; he ﷺ said: Who will purchase the Well of Rumah, put there his bucket and buckets for the Muslims for what is better than it in the Paradise? Uthman ﷺ said: Then I bought it from my real wealth.

It is also recorded in the Sahihayn that the Prophet ﷺ said:

أما خالد فقد حبس أدراعه واعتده في سبيل الله

As for Khalid, he has endowed his armour and prepared them for the path of Allah.

As for the statement that the person can decide to make the profits accruing from the waqf for other legal projects so far they are done to seek closeness to Allah, this is due to what the Messenger of Allah ﷺ said to Umar ﷺ as found in the hadith mentioned earlier:

إن شئت حبست أصلها وتصدقت بها

If you like you can grant it for a charity purpose.

The mention of charity seems to depict that he can give any kind of charity he wants from the waqf so far it is aimed at doing it for the sake of Allah. That was what Umar ﷺ did; he gave the land as a charity for the poor, close relations, manumission of slaves, visitors and wayfarers, as earlier mentioned.

As for the statement that alMutawali [the person managing the waqf] can take some necessary and reasonable wealth from it, the proof for that is what has preceded in the waqf of Umar ﷺ which the Prophet ﷺ allowed for him.

As for the statement that the Waqif (the person who donated his wealth) can take control of the management just like any other Muslim, the proof for that is what has been mentioned in the hadith of Uthman ﷺ in the statement of the Messenger of Allah ﷺ:

فيجعل فيها دلوه مع دلاء المسلمين

...put there his bucket and the buckets of the Muslims...

As for the statement that whoever makes an endowment that can hinder his heirs will have it void, this is because Allah has not given permission for that, rather He gave permission for a flowing charity, which the giver will benefit from, not a flowing sin that will perpetually fetch him sins and retributions. Allah, The Almighty Lord, has indeed forbidden causing harm to one another in His Noble Book generally and specifically, so also was the Messenger of Allah ﷺ as shown in the hadith:

لاضرر ولاضرار في الإسلام

No harm should be caused, and no reciprocating of harms to others, in Islam.

The hadith has been mentioned before.

Moreover, there is a specific prohibition from causing harm to others as indicated in the obligation of not harming the neighbours, heirs, and similar people.

As for the statement that any wealth put in a masjid or any institution such that the money is not benefiting to anyone, such as the wealth put in the Kaabah or the Masjid of the Prophet ﷺ, that it can be directed to benefiting purposes, the proof for that is the hadith of 'A'ishah رضي الله عنها recorded in Sahih Muslim and some other collections, she رضي الله عنها said: I heard the Messenger of Allah ﷺ say:

لولا أن قومك حديثو عهد بجاهلية أو قال: بكفر لأنفقت كنز الكعبة في سبيل الله

Had your people not just come out of Jahiliyyah or unbelief, I would have spent the treasures of the Kaabah in the path of Allah.

The hadith indicates that it is permissible to spend what is in the Kaabah (of wealth) when there is no any restraining factor the factor is people being new to Islam. That factor is no more now, the affair of Islam has been established since the days of the Companions رضي الله عنهم, not to talk of in the later time.

Moreover, if this is the ruling concerning a wealth left in the Kaabah, the wealth left in other masjids is more entitled to being spent in other Islamic course (when the wealth is lying waste), this is understood by the meaning of the purport of the text.

Therefore, whoever dropped any wealth in the Masjid of the Messenger of Allah ﷺ, or the Kaabah, or any other masjid, lying waste, such wealth will not be regarded as a means of seeking closeness to Allah, or considered a waqf or charity, it will rather be regarded as a treasure which might come under the Word of Allah the Almighty:

...and those who hoard up gold and silver [Al-Kanz: the money, the Zakat of which has not been paid], and spend it not In the Way of Allah, announce unto them a painful torment. [Tawbah: 34].

Meanwhile, this narration from Ahmad and Al-Bukhari on the authority of Abu Wail is not contradictory to what is discussed about directing donated wealth to a masjid to other useful things. The hadith goes thus: I sat near Shaybah in this masjid and he said: I too sat near Umar in that your seat and said: I have thought of not leaving any yellow or white metal (money) in this

masjid except that I share them among the Muslims (in need). I said: You cant do that! He asked: Why? I said:

Your two predecessors did not do it. He said: The two are those to be emulated. This hadith is not contradictory to that conclusion because the resolution of Umar and Shaybah bin Uthman bin Talhah from this hadith is not but to emulate the Messenger of Allah ﷺ and Abu Bakr ﷺ, however, the hadith of 'A'ishah ﷺ has clearly stated the reason why the Messenger of Allah ﷺ did not do that, which therefore becomes a practice to be emulated.

As for the statement that any waqf made to the graves for the reasons mentioned in the summary above, there is no doubt about its futility. That is because raising the graves is prohibited, as contained in the hadith of Ali ﷺ that he was commanded by the Messenger of Allah ﷺ to level every raised grave, and to cut off every status. The hadith is in Muslim and some others.

So also, it is prohibited to give a waqf for beautification of the graves, worse than that is causing tribulations for the people visiting the graves such as covering a grave with a big curtain, or putting precious stones, or is similar thing. Doing all those for the grave makes common people tend towards exalting the people in those graves beyond their position such as developing erratic beliefs in them. So also is making a waqf for slaughtering for graves, or what is similar, among other things that are apparently contradictory to the Shari'ah.

Nevertheless, if he were to make a waqf of feeding for people who visit graves (in the manner prescribed by the Shari'ah), or what is similar, this kind of waqf will be regarded a waqf for the visitors not for the grave itself. Moreover, a donator will not give his waqf to a grave except that that will lead to sins; it can also lead people to having erratic beliefs in the Deen.

Summarily, making waqfs for graves is a great evil and an immense disavowing matter, except if were to be made for mending faulty graves that will not involve beautifying or raising them, in that wise, it may be permissible, except that other than graves is better to be spent such money upon as said by As-Siddiq ﷺ: A living person is more entitled to new shrouds or a similar statement.

11 كتاب الهدايا
Book of Gifts
Al-Hadiyyah

It is legislated to accept gifts and reciprocate them. Gifts are permissible between a Muslim and a Kafir. It is prohibited to call back ones gift after giving it out. Children must be treated equally with respect to gifts. Returning a gift without any legal reason is detestable.

Explanation:

I say: As for the statement that it is legislated to accept gifts, the proof for that is the hadith of Abu Hurairah ﷺ as recorded with Al-Bukhari that the Prophet ﷺ said:

لو دعيت إلى كراع أو ذراع لأجبت ولو أهدي إلى كراع أو ذراع لقبلت

If I were to be invited to a (feast) of an animal foot or its arm I would have responded to the call, and if the foot of animal or its arm were to be given to me as gifts I would have accepted them.

Ahmad and At-Tirmidhi recorded the like of the hadith on the authority of Anas ﷺ. At-Tabarani recorded from the hadith of Umm Hakim Al-Khuzaiyah ﷺ, she said: I said O Messenger of Allah, you hate returning gifts. He ﷺ said: What a shameful thing (to return gifts)! If I were to be given an animals foot as a gift I would have accepted it.

Ahmad recorded a hadith on the authority of Khalid bin Adiyy ﷺ that the Prophet ﷺ said:

من جاءه من أخيه معروف من غير إشراف ولا مسألة فليقبله ولا يرده فإنما هو رزق ساقه الله إليه

Whoever receives a gift from his brother, without prying or asking for it, should accept it; it is a gift from Allah to him.

Al-Bukhari and some others recorded a similar hadith on the authority of 'A'ishah ﵂ that she said: The Prophet ﷺ used to accept gifts and would compensate them for it.

There are many Ahadith on the topic of accepting gifts and compensating for them; that is well known from him ﷺ.

As for the statement that a Muslim can give a gift to a Kafir and vice versa, that is because the Prophet ﷺ used to accept gifts made to him by Kuffar as was recorded by Ahmad, At-Tirmidhi, and Al-Bazzar in the hadith of Ali ﵁, who said: Kisra (the Emperor of Persia) sent a gift to the Messenger of Allah ﷺ and he accepted it, and Qaysar (the Emperor of Rome) sent a gift to him ﷺ and he accepted it, so also some other kings.

Abu Dawud also recorded in the hadith of Bilal ﵁ that the Emperor of Fadak gave the Prophet ﷺ some gifts.

Also in the Sahihayn on the authority of Anas ﵁ that Ukaydir Duumah sent a gift of silk cloak to the Messenger of Allah ﷺ.

Abu Dawud also recorded in the hadith of Anas ﵁ that the King of Rome sent a gift of velvet material to the Messenger of Allah ﷺ and he wore it.

Also in the Sahihayn in the hadith of Ali ﵁ that Ukaydir Duumah Al-Jandal sent a silk cloth to the Messenger of Allah ﷺ and he gave it to Ali, he ﷺ told him: Share it as veils among the Fatimahs.

Al-Bukhari also recorded on the authority of Asma bint Abi Bakr ﵂ that she said: My mother came desirous of Islam, and that was in the time of the Quraysh. So I asked the Prophet ﷺ if I could treat her well; he said yes.

Ibn Uyaynah ﵀ said: that was why Allah revealed:

لَّا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُم مِّن دِيَارِكُمْ أَن تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ ۚ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

"Allah does not forbid You to deal justly and kindly with those who fought not against You on account of Religion and did not drive You out of Your homes. Verily, Allah loves those who deal with equity." [Mumtahinah: 8].

Ahmad and At-Tabarani recorded in the hadith of Umm Salamah ﷺ that the Prophet ﷺ said to her:

إني قد أهديت إلى النجاشي حلة وأواقي من مسك ولا أرى النجاشي إلا قد مات ولا أرى هديتي إلا مردودة فإن ردت إلي فهي لك.

I have sent a garment and two ounces of perfume to An-Najashi ﷺ as gifts, and I can see that he had died, perhaps my gifts would be returned to me, if it is sent back you are going to have it.

There is Muslim bin Khalid Az-Zinji in the chain, Ibn Main and others held him to be trustworthy. Meanwhile another group of scholars held him to be a weak narrator.

There are various Ahadith indicating that the Prophet ﷺ used to accept gifts from the Kuffar.

As for what Ahmad, Abu Dawud, At-Tirmidhi, and Ibn Khuzaymah recorded, which Ibn Khuzaymah and At-Tirmidhi held to be sahih, in the hadith of Iyadh bin Hammad that he made a gift of something or a camel to the Prophet ﷺ, and he ﷺ said: Have you embraced Islam? The man replied in the negative, Messenger of Allah ﷺ then said:

إني نهيت عن زبد المشركين

I have been forbidden from taking scum of the polytheists.

Musa bin Uqbah also recorded in Al-Maghazi from AbdurRahman Ibn Kaab bin Malik ﷺ that Aamir bin Malik the one referred to as shooter of arrow tips arrived in Madinah and made a gift to the Prophet ﷺ, said to him:

إني لا أقبل هدية مشرك

I do not accept gifts from polytheists.

Author of Al-Fath ﷺ said: The men of the chain are trustworthy except that it is a mursal.

Al-Khatabi said: The most likely thing is that the hadith is abrogated. It is opined that the reason why the Messenger of Allah ﷺ retuned the gift to them was to make them angry, and not to have a soft heart towards them. It is not proper to have soft mind towards polytheists.

As for his acceptance of certain gifts ﷺ as earlier mentioned, perhaps that was because those whom he ﷺ accepted gifts from become are People of the Book. Another opinion was that he returned the gift of those who sought his love and friendship but accepted the gifts of those whom he too was desirous of their acceptance of the Deen. Turning down of some of the gifts can also be to just indicate undesirability of that, which does not imply its impermissibility. That is to merge all the Ahadith together. The meaning of scum of the polytheists is stated in Al-Fath as their gift.

As for the statement that it is not permissible to call back ones gift, this is because alhadiyyah is lexically and technically alhibbah a gift. It has come in the hadith recorded on the authority of Abdullah bin Abbas ﷺ that the Prophet ﷺ said:

العائد في هبته كالعائد يعود في قيئه

Someone who calls back his gift is like a person who eats back his vomit.

The hadith is also recorded in Sahih Muslim. In another version of Al-Bukhari, it reads:

ليس لنا مثل السوء

...we dont lay bad example.

Ahmad and the Collectors of Sunan among whom was At-Tirmidhi, who graded it as sahih so also Ibn Hibban, and Al-Hakim recorded on the authority of Ibn Umar ﷺ back to the Prophet ﷺ that he ﷺ said:

لا يحل للرجل أن يعطي العطية فيرجع فيها إلا الوالد فيما يعطي ولده
ومثل الرجل يعطي العطية ثم يرجع فيها كمثل الكلب أكل أكل حتى
إذا شبع قاء ثم رجع في قيئه

It is not permissible for a person to give a gift and later calls it back except a father in what he gives his son as a gift, the similitude of someone who calls back his gift is like a dog who ate to its fill, then vomited after which it began to eat his vomit.

His statement ﷺ not permissible indicates that calling back of gifts is prohibited, without considering the similitude of a dog made by the Prophet ﷺ upon which scholars differ; does that indicate a prohibition or a discouragement. The view of the majority of the scholars is that the act is prohibited except in the case of a father and his son as the author of Al-Fath ﷺ said.

As for the statement that it is obligatory on a parent to be fair among his children with respect to sharing gifts among them, the proof for that is the hadith of Jabir ﷺ recorded in Muslim and some other collections that he ﷺ said: The wife of Bashir said: Give my son a gift of a male slave and inform the Messenger of Allah ﷺ about that. He then went to the Messenger of Allah ﷺ and informed him what she had said. The Messenger of Allah ﷺ asked: Does the son have brothers? He said: Yes. The Messenger of Allah ﷺ asked further: did you give all of them the like of what you have him? He said: No. He then said: that is wrong; I will never be a party to anything except the truth.

In the version of Ahmad in the hadith of An-Numan bin Bashir ﷺ, the Messenger of Allah ﷺ said:

لا تشهدني على جور وإن لبنيك عليك حق أن تعدل بينهم

Do not make me a witness over falsehood; your children have the right of being just to them over you.

Also in the Sahihayn in the hadith of An-Numan bin Bashir ﷺ, the Prophet ﷺ said:

أكل ولدك نحلته مثل هذا

Have you given all your children the like of this gift?.

He replied: No.

Then the Messenger of Allah ﷺ said: Go and take back the gift.

In the version of Muslim also on the authority of An-Numan ﷺ, he ﷺ said:

اتقوا الله واعدلوا في أولادكم

Fear Allah and be just among your children.

That made the man called back the gift he had given.

In the version of Al-Bukhari, the word Al-Atiyyah [gift] was mentioned.

Ahmad, Abu Dawud, and An-Nasai also recorded on his authority that the Messenger of Allah ﷺ said:

اعدلوا بين أبنائكم اعدلوا بين أبنائكم اعدلوا بين أبنائكم

Be just among your children! Be just among your children! Be just among your children!

At-Tabarani, Al-Bayhaqi, and Said bin Mansur recorded on the authority of Ibn Abbas [that the Messenger of Allah ﷺ said]:

سووا بين أولادكم في العطية ولو كنت مفضلا أحدا لفضلت النساء

Be just among your children with respect to gifts; if I were to favour some people over others I would have favoured women.

There is Said bin Yusuf in the chain; he has some weakness. The hadith is graded hasan in Al-Fath with this chain.

The Ahadith indicate the obligation of being just among the children, and that preferential treatment among them is evil; whomever does that must take back whatever he has given any of them at the expense of the others. That is the view of Tawus, AthThauri, Ahmad, Ishaq and the Malikis. Meanwhile, the majority of the scholars are of the view that being just among the children is just a recommended act, the meaning they gave the Ahadith (commanding fairness) is not considerable.

As for the statement that it is discouraged to return a gift when there is no lawful reason for returning it, the proof for that is what was recorded in the first part of the work of proofs saying gifts ought to be taken from whomever gives it. Nevertheless, if there is a lawful reason for not taking it, it should not be taken. An example of such is any gift made to the people in authority upon the hope that they would tend towards the giver of the gift; this is a rashwah (bribe), proofs will be mentioned later regarding the prohibition of that.

There is also a narration indicating that it is not permissible to make gifts to leaders. Comment is coming over the routes of the hadith of gifts to leaders in the Book of Judicial System.

The reason for the prohibition (of making gifts to people in authority) is that it will become a bribe that can prevent the authority from carrying out what is expected of them concerning judgments or other duties.

An example of such gift is the type made to the person teaching one the Qur'an. The proof (against that) has been mentioned under the section of Ijarah. The same thing applies to what is given to a soothsayer, or a prostitute, or similar person. Another example is any gift made to whoever is accomplishing a thing for one, this is what is understood from the hadith of Abu Umamah ﷺ from the Prophet ﷺ that he said:

من شفع لأخيه شفاعة فأهدي له هدية عليها فقبلها فقد أتى بابا عظيما من أبواب الربا

Whoever pleaded on behalf of his brother and was given a gift upon it, then accepted it has indeed approached one of the doors of riba.

Abu Dawud recorded the hadith via the route of Al-Qasim bin AbdurRahman Al-Umawi Ash-Shami. There are some ill comments about him. Nevertheless, the Shari'ah has come with what prevents giving or accepting any gift that falls within descriptions earlier discussed.

باب الهبات

Chapter 11.1 Donations

Al-Hibat



If given without any substitution, then it has the same ruling as al-hadiyyah (gift) as applied to the cases discussed earlier, but if given with an expectation of a profit then it is a transaction, thus having the rulings of transaction. Al-Umra [a donation that lasts until the death of the donator] and Ar-Ruqba [a donation whereby the donor and whom it is donated to watch who dies first] create possession for whomever is so described and for their progeny after them and there cannot be going back on it.

Explanation:

I say: As for the statement that al-hibbah without substitution is al-hadiyyah in effect, this is because lexically and technically al-hadiyyah is al-hibbah; there is no difference between them. It is only a new terminology. So when al-hibbah has no expectation of profit behind it then reciprocating it with a similar kind act is permissible under the Shari'ah, a Kafir can come in, so also it is not permissible to go back on it and children must be treated equally regarding it. It is also not permissible to return it except when there is a lawful reason for doing so.

But if it were carried out in expectation of a profit, then it becomes a transaction because what is considered in every trade is consent and absence of it; each of them will be regarded to be present in al-hibbah carried out with hope of profit even when it is taking place as a donation.

However, if the person donated to ordinarily reciprocate the kind gesture of the donor, which the latter is not excepting anyway, then such will be regarded as al-hadiyyah. In simple words, al-hibbah without profit is the same as al-hadiyyah that has been earlier explained. When there is profit expected, it becomes a business transaction so the rules of the latter will apply. The proofs for each have been cited earlier on, there is no need to bring them again now.

As for the statement that Al-Umra and Ar-Ruqba necessitate possession, and other things that were said, the proof for that is the hadith of Abu Hurairah ﴿ﷺ﴾ recorded in the Sahihayn and some other collections that the Prophet ﴿ﷺ﴾ said:

العمري ميراث لأهلها

Al-Umra is an inheritance to the people who have it.

Or that he ﷺ said: Gift.

There is another hadith on the authority of Jabir ﷺ in the Sahihayn that ruled that any donation connected to another persons death is for the person given to. In the version of Muslim, he ﷺ said:

فمن أعمر عمرى فهي للذي أعمر حيا وميتا ولعقبه

Whoever gives Al-Umra, it is for the person given made for whether dead or living, and for his progeny after.

In the version of Ahmad, Muslim and Abu Dawud, it has that: Al-Umra which the Messenger of Allah ﷺ allowed is when the donor says: This is for you and your progeny. But if he were to say: This is for you so far as you are alive such a donation will go back to the donor afterwards.

But there is this view that the comment is from Abu Salamah ﷺ, that it is a mudraj inside the hadith of Jabir ﷺ therefore there is no proof in its purport neither can it be used to limit the scope of the Ahadith made Al-Umra absolute, like the two hadiths that we earlier mentioned. So also, the hadith of Zayd bin Thabit ﷺ recorded by Ahmad, Abu Dawud, Ibn Majah, and Ibn Hibban that the Messenger of Allah ﷺ said:

من أعمر عمري فهي لمعمره حياته ومماته لا ترقبوا من أرقب شيئا فهو سبيل الميراث

Whoever gives Al-Umra, it is for the person he made it for, dead or living, and do not make a Ar-Ruqba (a gift given while waiting for the death of the other person given), whoever does a Ar-Ruqba of any property, it is a path to inheritance.

Ahmad and An-Nasai recorded in the hadith of Ibn Umar ﷺ that he said the Messenger of Allah ﷺ said:

لا تعمروا ولا ترقبوا فمن أعمر شيئا أو أرقبه فهو له حياته ومماته

Do not make Al-Umra or Ar-Ruqba for whoever makes either Al-Umra or Ar-Ruqba of a property, it becomes the property of whomever it is made for, living or dead.

The men of the chain are trustworthy.

However, there is a narration that sets in a controversy, that is what An-Nasai recorded in the hadith of Jabir ﷺ upon the wording that the Prophet ﷺ ruled that Al-Umra is for someone to give a property to another person and his successor with the condition that if the person given and his successors should die, it then goes back to the donor and my progeny. Ahmad recorded it on the authority of Jabir ﷺ that a man from among the Ansar made a donation of a garden of date palm to his mother, the mother died thereafter, then came the man's brothers all claiming that they had equal right to the property. The man refused to accept their claim, so the matter was taken to the Prophet ﷺ who then shared the property among as inheritance.

The men of the chain are authentic. Abu Dawud also recorded it.

This hadith and what came before it indicate that the donated property will go to the heir even if that is not mentioned in the agreement, or there is a condition that heirs are not included. Therefore a statement like the property would back to me after your demise will not be given any consideration. The property will rather become that of the person donated to whether in Umra or Ruqba, and for his heirs after him. That is the view of some Shafiis.

The majority of the scholars are however of the view that when a donor says to someone: This is for you till your death, when you die the property comes back to me; that such a property will be regarded as a debt for a period of time that would go back to the donor [in a Umra] when the person dies, these scholars hold to the narration of Jabir ﷺ that has earlier been mentioned, and we have equally made certain comments; we mentioned that there was a case of idraj[34] in it.

34 Idraj is when a narrators accidental or intentional comment mixes with the comment of the Messenger of Allah ﷺ. The hadith is called a mudraj, so it is one of the categories of weak hadith.

The concept of Al-Umra was of Jahili origin, it means leaving a property in the possession of another until his death. An example of that is when a man gives another man a house and says, I gave it out to you until your death, this is why it is called Al-Umra.

As for Ar-Ruqba, it is derived, as a term, from al-muraqabah watching over because each of the person involved in the arrangement watches out for the death of another so that the property can eventually be his, so also their heirs, all of them watch who will first die.

That is the lexical meaning of Al-Umara and Ar-Ruqba.

12 كتاب الأيمان
Book of Oaths
Al-Ayman

Taking an oath ought to be in the Name of Allah the Almighty or with any of His Attributes. It is forbidden to swear with other than Allah. Whoever swears [by Allah] and says together with it: Insha Allah [if Allah wills] has made an exception in his oath such will not expiate when he breaks his oath. Whoever swears over a phenomenon but sees another better matter should go for that which is better but will have to expiate for his oath. Whoever is forced to make an oath is not bound by it therefore he will not be regarded as a sinner if he breaks the oath and he will not expiate for it. Al-Yamin Al-Ghamus [a deceptive oath] is the one which whoever is making it knows that he is not truthful. There is no blame upon an accidental statement [Al-Laghw]. One of the mutual rights between the Muslims is that they should help fulfil the oath of whoever makes it. The expiation for an oath is what Allah the Almighty mentions in Al-Qur'an.

Explanation:

I say: As for swearing in Allah's Name, that is very clear, as for His Attributes, it is because the Messenger of Allah ﷺ swore with muqallibulqulub [Changer of the hearts] as it has come in the hadith of Ibn Umar ﷺ recorded in Sahih Al-Bukhari and some other collections that he used to swear much with:

لا ومقلب القلوب

Nay, by the Changer of the hearts.

It is also recorded in the Sahihayn on the authority of Umar ﷺ that the Prophet ﷺ said about Zayd bin Harithah ﷺ:

وأيم الله إن كان لخليقا للإمارة

I swear by Allah, he (Zayd) is the best for leadership.

It has also come authentically from him ﷺ that he swore with:

والذي نفسي بيده

I swear by He in Whose Hands is my soul.

The hadith is in the sahih.

The Prophet ﷺ also reported from Jibril عليه السلام that he said [to Allah the Almighty]:

وعزتك لا يسمع بها أحد إلا دخلها

By Your Honour, none will hear about it except that he wishes to enter it.

He was referring to Al-Jannah. The hadith is in the Sahih also. There are several other Ahadith.

As for the statement that swearing by other than Allah's Name and Attributes is forbidden, the proof for that is the hadith of Ibn Umar رضي الله عنه recorded with Muslim and some others that the Prophet ﷺ heard Umar رضي الله عنه swearing by his fathers name, he ﷺ then said:

إن الله نهاكم أن تحلفوا بآبائكم فمن كان حالفا فليحلف بالله تعالى أو ليصمت

Indeed Allah has forbidden you from swearing in you fathers names, whoever wants to swear should swear in Allah's Name, or remain silent.

In another version, he ﷺ said:

من كان حالفا فلا يحلف إلابالله

Whoever must swear should do so in Allah's Name.

In the hadith recorded on the authority of Abu Hurairah ﷺ as found with Abu Dawud, An-Nasai, Ibn Hibban, and Al-Bayhaqi, he said the Messenger of Allah ﷺ said:

لا تحلفوا إلا بالله ولا تحلفوا إلا وأنتم صادقون

Do not swear except in Allah's Name; do not swear except you are truthful.

Abu Dawud and At-Tirmidhi who classified it as hasan and Al-Hakim who held it to be sahih, recorded from the Prophet ﷺ that he ﷺ said:

من حلف بغير الله فقد كفر

Whoever swears in other than Allah's Name has committed unbelief.

In another version:

فقد أشرك

...has committed polytheism.

The hadith can be found with Ahmad in this version. In the version of At-Tirmidhi and Al-Hakim, he ﷺ said:

فقد كفر وأشرك

...such has committed unbelief and polytheism.

There are several other Ahadith in the section.

As for the statement that whoever swears and says: Insha Allah that such has made an exception in his oath, the proof for that is the hadith of Abu Hurairah ﷺ who said the Messenger of Allah ﷺ said:

من حلف فقال إن شاء الله لم يحنث

Whoever swears and says Insha Allah has no expiation to make.

Ahmad, At-Tirmidhi, Ibn Majah, An-Nasai and Ibn Hibban recorded the hadith. In the version of Ibn Majah it goes thus:

فله ثنياه

He has his exception (in his favour).

In the version of An-Nasai, he ﷺ said:

فقد استثنى

...such has indeed made an exception.

Al-Hakim recorded it; Ibn Hibban held it to be sahih.

Abu Dawud recorded from Ikrimah that the Prophet ﷺ said:



By Allah I shall fight the Quraysh.

Then he ﷺ said:

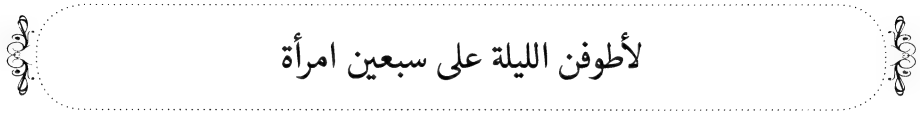


If Allah wills.

He repeated the statement, By Allah I shall fight the Quraysh, Insha Allah. However, He did not fight them!

Abu Dawud said more than one recorders of hadith has recorded it on the authority of Ibn Abbas ﷺ; Al-Bayhaqi recorded it however as a disconnected and connected narration.

Another hadith that gives support to the hadith of the section is the one in the Sahih that Sulayman bin Dawud ﷺ said:



I shall go round all my seventy wives tonight…

In that hadith, the Messenger of Allah ﷺ said:



Had Sulayman added: Insha Allah, he would not have expiated for it.

That is the view of the majority of the scholars; Ibn AlArabi ﷺ even said there is a consensus over it, he said: Muslim scholars agree that the word Insha Allah after an oath absolves the person from expiating for it upon the condition that there is no lapse of time.

Malik ﷺ said: The best of what I have heard regarding making an exception in an oath is that the exception will be considered for the person making the oath so far he says it immediately, it must be connected to the speech he made otherwise there is no exception for him.

This is the position of the people of knowledge that when someone makes an exception with the word Insha Allah after an oath, connected with the speech, he is absolved from expiating for it.

As for the statement that whoever swears over a thing and later sees a better thing should refrain from carrying out the first, that he should expiate for his oath and go for the better, the proof for that is what is established in the Sahihayn and some other collections in the hadith of AbdurRahman bin Samurah ﷺ who said the Messenger of Allah ﷺ said:

إذا حلفت على يمين فرأيت غيرها خيرا منها فأت الذى هو خير
وكفر عن يمينك

If you swear over a thing and you see what is better than what you have sworn over, carry out what is better and expiate for your oath.

In another narration, he ﷺ said:

كفر عن يمينك وات الذى هو خير

Expiate for your oath and go for that which is better.

In the version of An-Nasai and Abu Dawud, he ﷺ said:

فكفر عن يمينك ثم أت الذي هو خير

Expiate your oath and then go for that which is better.

Muslim and some others recorded on the authority of Adiyy bin Hatim ﷺ and on the authority of Abu Hurairah ﷺ, what is similar. Also in the Sahihayn on the authority of Abu Musa, that he ﷺ said:

لا أحلف على يمين فأرى غيرها خيرا منها إلا أتيت الذي هو خير وكفرت عن يميني

I will not swear over a thing then see what is better than it except that I will go for that which is better and expiate for my oath.

There are several other Ahadith in the section.

As for the statement that whoever is forced to make an oath is not under an obligation to carry it out, neither is he a sinner if he fails to carry it out, this is because the act of a person under duress is no act at all.

Allah has indeed said whoever makes a statement of Kufr due to duress is not at faults; He The Almighty said:

... إِلَّا مَنْ أُكْرِهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ ...

.... except him who is forced thereto and whose heart is at rest with Faith... [An Nahl: 106]

We also have this hadith:

رفع عن أمتي الخطأ والنسيان وما استكرهوا عليه

It has been overlooked for Ummah: mistakes, forgetfulness, and what they are forced to do.

The hadith above have some comments against it.

A person forced to make a false oath cannot be said to have any sin because it was not his decision; to say that such a person will be responsible for the sin would be wrong logically and textually.

As for the statement that a deceptive oath is the one which the person making it knows its falsehood, the proof for that is the hadith of Ibn Umar ﷺ who said, a Bedouin came to the Prophet ﷺ and said: O Messenger of Allah, what are the major sins? in his response to the question, the Messenger of Allah ﷺ said:

واليمين الغموس

...and a deceptive oath.

In the hadith, he said he asked, What is a deceptive oath? The Messenger of Allah ﷺ replied:

التي يقتطع بها مال امرئ مسلم وهو فيها كاذب

A false oath made to eat up the wealth of a Muslim.

As for the statement that there is no blame over any unintentional oath, the proof for that is the Word of the Almighty that goes thus:

"Allah will not punish you for what is unintentional in your oaths" [Al Maidah: 89].

It is recorded in Al-Bukhari on the authority of 'A'ishah ﷺ that she said the Verse above was revealed regarding a man who said: Nay by Allah, yes by Allah.

Ibn Al-Mundhir recorded what is similar to that on the authority of Ibn Umar, Ibn Abbas, and some other Companions ﷺ. He also cited some Tabiun of that view.

Abu Dawud recorded on the authority of 'A'ishah ﷺ that she said that the Messenger of Allah ﷺ said:

هو كلام الرجل في بيته كلا والله وبلى والله

[Unintentional oath] refers to a man's speech in his home Nay by Allah, yes by Allah.

Al-Bayhaqi also recorded the hadith so also Ibn Hibban; Al-Daraqutni held it to be an authentic statement of a Sahabi. Abu Dawud said: More than one narrator had reported it from Ata ﷺ then from 'A'ishah ﷺ as her statement.

The view of the Hanafis is that it is when a person swears over a thing he thinks of but later appears to him to be the opposite. That is also a view of some other scholars. It is also said that it is an oath a man made to escape something he fears.

The difference of opinions over that is well known but the interpretation given by the Sahabah to the Noble Verse takes precedence over the interpretations of others.

As for the statement that it is among the mutual rights of Muslims that they should assist their fellow Muslim in fulfilling their oath, the proof for that is what has come in the Sahihayn as a command from the Messenger of Allah ﷺ about that, as recorded on the authority of Al-Bara and some other companions of the Messenger of Allah ﷺ.

Ahmad recorded on the authority of Abu Zahiriyyah from 'A'ishah ﷺ that a woman made a gift of date to her, that she ate a part of it and there remained the other part, the woman said: I swear that you eat the remaining part. The Messenger of Allah ﷺ said:

أبريها فإن الإثم على المحنث

Assist her over her oath, since the sin will upon he who vowed.

The men of the hadith are trustworthy.

As for the statement that the legal expiation is what Allah mentioned in Al-Qur'an, and that is His Word:

وَلَٰكِن يُؤَاخِذُكُم بِمَا عَقَّدتُّمُ الْأَيْمَانَ ۖ فَكَفَّارَتُهُ إِطْعَامُ عَشَرَةِ مَسَاكِينَ مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبَةٍ ۖ فَمَن لَّمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ ۚ ذَٰلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ ۚ وَاحْفَظُوا أَيْمَانَكُمْ ۚ كَذَٰلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ لَعَلَّكُمْ تَشْكُرُونَ

…but He will punish you for your deliberate oaths; for its expiation (a deliberate oath) feed ten poor persons, on a scale of the average of that with which you feed your own families; or clothe them; or manumit a slave. But whosoever cannot afford (that), then he should fast for three days. That is the expiation for the oaths when you have sworn. And protect your oaths (i.e. do not swear much). Thus Allah make clear to you his Ayat (proofs, evidences, verses, lessons, signs, revelations, etc.) that you may be grateful. [Al Maidah: 89].

13 كتاب النُذر
Book of Vows
An-Nadhr

A correct oath is the one done to seek the Pleasure of Allah, The Almighty. Therefore, a vow must be an act of seeking closeness to Allah. No vow is acceptable in disobedience to Allah. An example of a sinful vow is when a man seeks to act unjustly between his children by a vow, or when he wants to show preference to one of his heirs above others in opposition to what Allah has legislated. Other examples of sinful vows are the ones made over graves and things Allah has not permitted. Whoever makes compulsory on himself an act which Allah has not made compulsory is not bounded by it, so also is if the act were to be what Allah has legislated but the person cannot withstand it out. Whoever makes an unnamed vow, or a sinful one, or the type he cannot carry out, such should just expiate for an oath. Whoever makes a vow to do an act of seeking closeness to Allah when he was a mushrik, he must fulfil it. Vows made regarding inheritance can only be fulfilled within one third of the property. If a person who made a vow dies before he can fulfil it, his children can fulfil it on his behalf and it will be acceptable.

Explanation:

I say: As for the statement that no vow is valid except it is made with the intention of seeking Allah's Pleasure, this is because there is a prohibition against vowing as recorded in the Sahihayn and some other collections on the authority of Ibn Umar ﴿ﷺ﴾ who said: The Messenger of Allah ﴿ﷺ﴾ forbade making vows; he said: It prevents nothing, rather it is used to pull out some wealth from a miser.

There is another similar hadith recorded in the Sahihayn on the authority of Abu Hurairah ﴿ﷺ﴾ there came a permission regarding vows of obedience but the prohibition remains as regard vows of sins, as recorded in the Sahihayn and some other collections on the authority of 'A'ishah ﴿ﷺ﴾ from the Prophet ﴿ﷺ﴾ that he said:

من نذر أن يطيع الله فليطعه ومن نذر أن يعصيه فلا يعصه

Whoever makes a vow to obey Allah should do the act of obedience, but whoever makes a vow to disobey Him should not.

It is upon the meaning of the hadith above that the Word of Allah below will be well understood:

يُوفُونَ بِالنَّذْرِ ...

They (are those who) fulfil (their) vows... [Al Insan: 7].

[Al-Imam] At-Tabari ﴿رحمه الله﴾ recorded with an authentic chain on the authority of Qatadah who said regarding the Word of Allah cited above: They used to make vows of obedience to Allah such as Salah, fasting, Zakat, hajj, Umrah and every other thing Allah made obligatory over them; this is why Allah called them al-abrar the righteous.

There is another phrase that came saying the expression is specific; that there is no vow making except in acts of obedience to Allah alone, this is as recorded by Ahmad, Abu Dawud, and some other collectors on the authority of Amr bin Shuayb from his father, who also reported from his father ﴿رضي الله عنه﴾ that the Prophet ﴿ﷺ﴾ said:

لا نذر إلا فيما ابتغى به وجه الله

There is no vow making except in acts of obedience done to seek Allah's Pleasure.

Muslim and other collectors recorded on the authority of Ibn Abbas ﴿رضي الله عنهما﴾ that the Messenger of Allah ﴿ﷺ﴾ said:

من نذر نذرا في معصية فكفارته كفارة يمين

Whoever makes a vow of disobedience its expiation is the same as that of an oath making.

Ahmad and the Collectors of Sunan recorded on the authority of 'A'ishah ﴿رضي الله عنها﴾ that the Prophet ﴿ﷺ﴾ said: There is no vow in disobedience, its expiation is the same as the expiation for oath making.

As for making a vow of acting unjustly between ones children, the proof for that is what has been mentioned in the Book of Gifts, so also is any act that opposes what Allah has legislated regarding inheritance, this is because opposing that is an act of disobedience, and there is no vow in disobedience as mentioned earlier on.

As for making vows over graves, that is certainly not a vow in obedience, neither a vow made to seek the Face of Allah. Rather such a vow will be considered disobedience if it leads to having erratic beliefs with respect to the people in the graves, as that often occurs.

Abu Dawud recorded with a fair chain from Said bin Al-Musayyab that two brothers from Ansar had an inheritance, one of them asked his brother about it; he replied: If you go on asking me, then I make a vow that all my wealth will go in the service of the Kaabah. Umar ﴿رضي الله عنه﴾ then said to the man: Kaabah is not in need of your wealth; expiate for your oath, there is no vow in disobedience to Allah, or in severing the ties of kinship, nor over what you do not possess.

Malik and Al-Bayhaqi recorded with an authentic chain, held to be authentic by Ibn As-Sakan, that 'A'ishah ﴿رضي الله عنها﴾ was asked regarding a man who proclaimed he would place all his wealth under the service of the Kaabah he speaks to any of his close relation. She ﴿رضي الله عنها﴾ said: He should expiate for his oath.

Consequently, if all these acts are acceptable to be done with respect to the Kaabah, not being acceptable with respect to other places or graves is better said.

It comes under this ruling as well, vows which Allah has not legislated: such as the ones made to beautify masjids or the ones made to people of disobedience in support of their act. All those are examples of vows made in disobedience to Allah. The least they could be is to regard them as vows not permitted by Allah; the ones permitted by Allah are ones carried out in obedience to Allah, and to seek His Face. All forms of permissible vows come under these two

reasons, and from them, we can distinguish between a permissible, detestable, and prohibited vows.

As for the statement that whoever makes compulsory upon himself an act which Allah has not legislated, that such act will not be obligatory, the proof for this is the hadith of Ibn Abbas ﷺ recorded in Sahih Al-Bukhari and some other collections that he ﷺ said: The Messenger of Allah ﷺ was making a sermon one day while a man was standing, he ﷺ asked about him , they said: he is Abu Israil, he vowed to remain standing in the sun, without sitting or seeking a shade, and that he would not talk, and he would fast. The Prophet ﷺ said:

مروه ليتكلم وليستظل وليقعد وليتم صومه

Tell him to start talking, seek a shade and sit, but complete his fasting.

Ahmad recorded on the authority of Amr bin Shuayb from his father, who also reported from his father, a similar hadith regarding a man who made a vow that he would remain in the sun until the Messenger of Allah ﷺ would finish his talk, the Prophet ﷺ said to him:

إنما النذر فيما ابتغي به وجه الله

A vow is made to seek Allah's Pleasure.

As for the statement that whoever makes a lawful vow about something he is incapable of carrying out, that it is not compulsory upon him to fulfil the vow, the proof for that is the hadith of Anas ﷺ recorded in the Sahihayn and some other collections that the Prophet ﷺ saw an old man being helped to walk by his two sons, he ﷺ asked why? He was told the man vowed to walk, the Messenger of Allah ﷺ said:

إن الله تعالى عن تعذيب هذا لنفسه لغنى

Indeed Allah is in no need of the punishment this person has inflicted upon himself.

Then he ﷺ commanded him to ride a mount.

In an additional narration from An-Nasai, it was recorded that the man vowed to walk down to the House of Allah!

Abu Dawud recorded with an authentic chain from the Prophet ﷺ that he ﷺ said:

من نذر نذرا لم يسمه فكفارته كفارة يمين ومن نذر نذرا لم يطقه فكفارته كفارة يمين

Whoever makes an unspecific vow, the expiation for such is the same as the expiation for an oath. Whoever also makes a vow but becomes incapable of exhibiting it, the expiation for that is the same as the expiation for an oath.

Ibn Majah also recorded it but with this addition:

ومن نذر نذرا أطاقه فليف به

Whoever makes a vow which he can afford let him do it.

An example of that was his ﷺ command to the man who vowed that he would go on his foot to Kaabah, that he should rather ride an animal. The hadith is recorded in the Sahihayn on the authority of Uqbah bin Aamir ﷺ. It is also there in Musnad Ahmad and Sunan Abi Dawud on the authority of Ibn Abbas ﷺ; also in the former on the authority of Uqbah bin Aamir ﷺ.

As for the statement that whoever makes an unspecific vow, or a vow that is an act of disobedience, or a vow he cannot afford, that such a person will have to expiate for it as he will do in an oath, the proof for that is the hadith of Uqbah bin Aamir ﷺ recorded with Ibn Majah and At-Tirmidhi who also authenticated it that the Messenger of Allah ﷺ said:

كفارة النذر إذا لم يسمه كفارة يمين

The expiation for an unnamed vow is the same as that of an oath.

The hadith is recorded in Sahih Muslim but without this statement: an unnamed vow. That has also been mentioned in the hadith of Ibn Abbas ﷺ that was shortly mentioned regarding a person who made an unnamed vow.

Muslim recorded on the authority of Ibn Abbas ﷺ that the Prophet ﷺ said:

من نذر نذرا في معصية فكفارته كفارة يمين

Whoever makes a vow in disobedience, expiating for it is the same as that of an oath.

That was how the author of Al-Muntaqa referenced it, to Muslim; there is a doubt regarding that. Rather it is recorded with Abu Dawud, Ibn Majah and Ahmad.

Ahmad and the Collectors of Sunan recorded that the Prophet ﷺ said:

لا نذر في معصية وكفارته كفارة يمين

There is no vow in disobedience; its expiation is the same as that of expiation for an oath.

There is a problem with the chain of the hadith above.

Abu Dawud and Ibn Majah recorded with an authentic chain that the Prophet ﷺ said:

ومن نذر نذرا لم يطقه فكفارته كفارة يمين

Whoever makes a vow of what he cannot afford, expiating for it is the same as that of an oath.

That was how the Messenger of Allah ﷺ commanded a woman who vowed to walk but did not possesses the strength, to expiate for her vow. Ahmad and Abu Dawud recorded the hadith.

As for the statement that whoever made a vow of seeking closeness to Allah while he was a Mushrik that he will fulfil the vow when he becomes a Muslim, the proof for that is the hadith of Umar ﷺ as recorded in the Sahihayn and some other collections that he ﷺ said: O Messenger of Allah, I made a vow in Jahiliyyah that I would carry out seclusion for a night at the Sacred Masjid. The Messenger of Allah ﷺ said: Fulfil your vow.

Ahmad and Ibn Majah recorded on the authority of Maymuna bint Kardam that her father asked the Prophet ﷺ by saying: O Messenger of Allah, I made a vow to slaughter an animal at Buwanah. He ﷺ asked: Is there any idol or false deity there? He said: No. Then he ﷺ said: Fulfil your vow. The men of the chain are men of the Sahih Collection.

Abu Dawud recorded the like of the hadith on the authority of Thabit bin Ad-Dahak; its chain is sahih.

As for the statement that no vow will be implemented except it is within one third of an inheritance, the proof for that is the hadith recorded on the authority of Kaab bin Malik in the Sahihayn that he ﷺ said: O Messenger of Allah, I want to make it a part of my repentance that all my wealth be given as charity in the course of Allah and His Messenger. The Prophet ﷺ said:

أمسك عليك بعض مالك فهو خير لك

Hold part of your wealth; that is better for you.

In the version of Abu Dawud, he said: As a part of my repentance, I release all my wealth in the course of Allah and His Messenger as a charity. He ﷺ said: No. He asked: What of the half? He ﷺ said: No. He asked further: What

of onethird? He said: Yes. There is Muhammad bin Ishaq in the chain of the hadith.

In another version of Abu Dawud, he ﷺ:

يجزى عنك الثلث

One third is enough.

Ahmad and Abu Dawud recorded in the hadith of Abu Lubabah bin AbdilMundhir that when Allah granted his repentance, he said: As a part of my repentance, I want to leave the abode of my people and come and stay with you, and that I will release all my wealth as a charity in the path of Allah the Almighty, and His Messenger. The Messenger of Allah ﷺ said:

يجزى عنك الثلث

One third is enough.

As for the statement that whoever dies without fulfilling a vow made that his son can fulfil it on his behalf, the proof for that is the hadith of Ibn Abbas ﷺ that Sad bin Ubadah ﷺ sought a verdict from the Messenger of Allah ﷺ he said: My mother died while she had an unfulfilled vow upon her, the Messenger of Allah ﷺ said:

اقضه عنها

Fulfil it on her behalf.

Abu Dawud and An-Nasai recorded it with an authentic chain; the basis of the story is in the Sahihayn. In Sahih Al-Bukhari, Ibn Umar commanded a woman who said she would observe a Salah on behalf of her mother at Quba to go ahead after her mother had made the vow but died before she could fulfil it.

Ibn Abi Shaybah recorded on the authority of Ibn Abbas ﴿رضي الله عنه﴾ a similar report also with an authentic chain.

Yet a different thing from that was recorded on the authority of both of them.

14 كتاب الأطعمة
Book of Eatables (Food)
Al-Atimah

باب المحرمات من الأطعمة

Chapter 14.1 Forbidden Eatables

The basis is that everything is permissible to be eaten. Nothing is forbidden except what Allah and His Messenger (ﷺ) forbade. Whatever they both silent about is a pardon. Therefore, whatever Al-Qur'an says is prohibited is indeed prohibited. Every predator with fangs and every bird with claws, so also domestic donkeys, scavengers unless they are restrained (for days), dogs, cats and every animal that is dirty in nature. Other than those are permissible.

Explanation:

I say: As for the statement that the basis of everything is permissibility, example of what justifies that is the Word of Allah the Almighty:

قُل لَّا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَىٰ طَاعِمٍ يَطْعَمُهُ إِلَّا أَن يَكُونَ مَيْتَةً أَوْ دَمًا مَّسْفُوحًا أَوْ لَحْمَ خِنزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقًا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ ۚ فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ رَبَّكَ غَفُورٌ رَّحِيمٌ

Say (O Muhammad): "I find not in that which has been inspired to me anything forbidden to be eaten by one who wishes to eat it, unless it be Maytatah (a dead animal) or blood poured forth (by slaughtering or the like),

or the flesh of swine (pork, etc.) for that surely is impure, or impious (unlawful) meat (of an animal) which is slaughtered as a sacrifice for other than Allah (or has been slaughtered for idols, etc., or on which Allah's Name has not been mentioned while slaughtering). But whosoever is forced by necessity without wilful disobedience, nor transgressing due limits, (for Him) Certainly, Your Lord is Oft-forgiving, Most Merciful." [Al-An'am: 145]

A principle of jurisprudence is that annakirah taumm [an indefinite article implies a generality].

Another proof is the hadith of Salman Al-Farisi ﷺ who said: The Messenger of Allah ﷺ was asked regarding fat, cheese and onager (wild ass), he ﷺ:

الحلال ما أحل الله في كتابه والحرام ما حرم الله في كتابه وما سكت عنه فهو مما عفى لكم

Whatever Allah says is permissible in His Book is indeed permissible and whatever He says is forbidden is indeed forbidden, but whatever He is silent over is among what has been overlooked for you.

Ibn Majah and At-Tirmidhi recorded the Ahadith. There is Sayf bin Haaroon Al-Burhumi in the chain of Ibn Majah; he is a weak narrator.

There is another hadith in the Sahihayn on the authority of Sa'd ibn Abi Waqqas that the Messenger of Allah ﷺ said:

إن أعظم المسلمين في المسلمين جرما من سأل عن شيء لم يحرم على الناس فحرم من أجل مسألته

The most sinful Muslim with respect to other Muslims is someone who asked for something that is not forbidden for people, but made forbidden for then because of request.

It is also in the Sahihayn on the authority of Abu Hurairah ﷺ that the Prophet ﷺ said:

ذروني ما تركتكم فإنما هلك من كان قبلكم بكثرة سؤالهم واختلافهم على أنبيائهم فإذا نهيتكم عن شيء فاجتنبوه وإذا أمرتكم بأمر فأتوا منه ما استطعتم

Spare me of what I left (unmentioned) for you, what caused destruction of those who came before you was much of questions and their differences over their Prophets. Whenever I forbid you from anything, shun it completely but when I command of something, carry it out according to your capacity.

Al-Bazaar recorded a hadith which he said its chain is fair, so also Al-Hakim, he too said it is authentic, on the authority of Abu Ad-Darda ﷺ from the Messenger of Allah ﷺ that he said:

ما أحل الله في كتابه فهو حلال وما حرم فهو حرام وما سكت عنه فهو عفو فاقبلوا من الله عافيته فإن الله لم يكن لينسى شيئا وتلا {وَمَا كَانَ رَبُّكَ نَسِيّاً}

Whatever Allah makes permissible in His Book is indeed permissible and whatever He forbids is indeed forbidden, whatever He is silent over, accept it, it is from His Pardon for you. Indeed Allah never forgets anything. Then he ﷺ recited the Word of Allah:

وَمَا كَانَ رَبُّكَ نَسِيًّا

...and Your Lord is never forgetful. [Maryam: 64].

Al-Daraqutni also recorded on the authority of Abu Thalabah ﷺ from the Messenger of Allah ﷺ:

إن الله فرض فرائض فلا تضيعوها وحد حدودا فلا تعتدوها وسكت عن أشياء رحمة لكم, لا عن نسيان فلا تبحثوا عنها

Indeed Allah enjoined some obligations (upon the slaves), never be negligent about them, He has equally set some limits, do not go beyond them. He is silent over some matters out of mercy for you, not out of forgetfulness, do not venture into them.

There are in the Book and Sunnah facts that confirm this great and enormous principle. Therefore, what will be held forbidden is what has specifically come in the proofs such as the Word of Allah the Almighty at the end of the Verse [earlier quoted]:

"...unless it be Maytatah (a dead animal) or blood poured forth (by slaughtering or the like), or the flesh of swine (pork, etc.)..."

Similar to that is the following Verse:

حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ ....

Forbidden to you (for food) are: Al-Maytatah (the dead animals cattle beast not slaughtered)... [Al-Maidah: 3].

Till the end of the Verse.

Among the forbidden animals are carnivorous animals with canines, so also every bird with claws, the proof for that is the hadith of Ibn Abbas ﷺ recorded by [Al-Imam] Muslim and some others wherein he ﷺ said:

The Messenger of Allah ﷺ forbade every carnivore with canines and every bird with claws.

Another proof is the hadith Abu Thalabah Al-Khushani ﷺ recorded with Muslim and other collectors that the Messenger of Allah ﷺ said:

كل ذى ناب من السباع فأكله حرام

Every carnivore with a canine is forbidden to be eaten.

There are other Ahadith in the section such as the ones in the Sahih and other collections.

Examples of such animals described in the hadith are lions, tigers, hyena and every other animal that uses its canine for support and attack.

The author of An-Nihayah said: The animals so described are the ones that prey on other animals such as lions, hyena, and tiger and so on.

The author of Al-Qamus said: The word As-Sabu means every carnivorous animal. End of quote.

As for the birds so described, their makhlab is the claw just as human nails, so said the Arabic lexicographers.

Another animal that is forbidden to be eaten are domestic donkeys, the proof for that is the hadith of Al-Bara bin Aazib ﷺ recorded in the Sahihayn that the Messenger of Allah ﷺ forbade eating domestic donkeys, on the day of Khaybar.

It is also recorded in the Sahihayn that Ibn Umar ﷺ narrated a similar hadith. Yet in the Sahihayn, in the hadith of Abu Thalabah Al-Khushani ﷺ, what is similar to what has been reported. There are other Ahadith.

The view of the majority of the scholars is that domestic donkeys are forbidden for consumption.

Another animal prohibited for consumption are scavengers [AlJallaalah] before they are made to expel what is in their bellies as well as milk. The proof for that is the hadith of Ibn Umar ﷺ recorded with Ahmad, Abu Dawud, Ibn Majah and At-Tirmidhi who classified it as hasan, that the Messenger of Allah ﷺ forbade consuming scavengers and their milk.

Ahmad, An-Nasai, At-Tirmidhi, Ibn Hibban, Al-Hakim and Al-Bayhaqi recorded a hadith classified as sahih by At-Tirmidhi and Ibn Daqiq alEid, the hadith of Ibn Abbas ﷺ, that states it was prohibited to consume scavengers and their milk.

Ahmad, An-Nasai, Al-Hakim, Al-Daraqutni and Al-Bayhaqi recorded on the

authority of Amr bin Shuayb from his father, who also reported from his father ﴿ﷺ﴾, a hadith similar to the foregoing.

There is another hadith about that in this section.

It is the view of [Al-Imam] Ahmad ibn Hanbal ﴿ﷺ﴾ that scavengers and their milk should not be consumed; that is also the view of Ath-Thawri ﴿ﷺ﴾ and the Shafiis.

Some of people of knowledge say it is only detestable to consume them. Nevertheless, what is apparent in the forbiddance is prohibition. Therefore, when the reason for the prohibition is still present, it will be forbidden to consume them but when the reason is no more, there is nothing against consuming them.

Another forbidden animal is the dog. There is no difference of opinion worthy of consideration regarding that fact. Dog is a dirty animal. There is a command regarding general and specific killing of dogs. The Prophet ﴿ﷺ﴾ forbade trading in dogs as earlier mentioned and as will be shown later. It has been mentioned that whenever Allah forbids a thing, He will also forbid trading in it.

We have some of the scholars who include dogs among the carnivores.

Cat is also prohibited for consumption. The proof for that is the hadith of Jabir ﴿ﷺ﴾ recorded with Abu Dawud, Ibn Majah, and At-Tirmidhi that the Prophet ﴿ﷺ﴾ forbade eating cats so also trading in them. There is Umar bin Yazid As-Sanaaani in the chain of the hadith; he is a weak narrator. Meanwhile the hadith that has come over prohibition of trading in dogs and cats can support the one mentioned shortly. The hadith is in the Sahih as was mentioned.

Both wild and domesticated cats are prohibited. The Shaafiis support the view that wild cats are permissible for consumption.

Another category of animals prohibited are dirty animals. The proof for that is the word of Allah the Almighty:

... وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ..

...and prohibits them as unlawful Al-Khabaith (i.e. all evil and unlawful things, deeds, foods, etc.)... [Al Araf: 157].

Whatever kind of animal people find to be dirty even when there is no other

reason other than the dirtiness is forbidden. If some people were to consider it as a dirty animal while some others do not, then the view that will be taken is that of the majority. Examples of such are insects, so also many types of animals people do not eat yet there are no proofs indicating that those animals are not permissible. People most times will not refrain from eating those animals except because of their dirtiness; therefore, the Word of Allah below will apply to them:

...and prohibits them as unlawful Al-Khabaith (i.e. all evil and unlawful things, deeds, foods, etc.)...[Al Araf: 157]

Abu Dawud recorded on the authority of Milqaam bin Talibb ﷺ who said: I am a companion the Prophet ﷺ, I did not heard anything concerning the prohibition of insects.

Al-Bayhaqi said the chain of the hadith is not strong. An-Nasai said this Milqaam bin Talibb is not popular.

The hadith does not oppose the Verse of the Qur'an, it can only be said that the companion never heard anything from the Prophet ﷺ regarding the prohibition of what he said. It was possible that other people heard it from the Messenger of Allah ﷺ.

Ibn Adiyy and Al-Bayhaqi recorded a hadith on the authority of Ibn Abbas ﷺ that he said: The Prophet ﷺ forbade eating of vulture. There is Khaarijah bin Musab in the chain, he is a very weak narrator, he cannot be cited as a proof.

Ahmad and Abu Dawud recorded on the authority of Eesa bin Numaylah Al-Fazaari from his father who said: I was with Ibn Umar ﷺ when he was asked about hedgehog, then he recited this Verse:

قُل لَّا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَىٰ طَاعِمٍ يَطْعَمُهُ ...

Say (O Muhammad): "I find not In that which has been inspired to me anything forbidden to be eaten by one who wishes to eat it..." [Al-An'am:145]

When Ibn Umar ﷺ recited the Verse, an old man present said: I heard Abu Hurairah ﷺ narrated that the animal was mentioned in the presence of the Prophet ﷺ and he said:

خبيث من الخبائث

One of the dirty animals.

Ibn Umar [having heard what the man said]: If indeed the Messenger of Allah ﷺ said that it is as he said.

Eesa bin Numaylah [found in the chain of the hadith above] is weak. Therefore the hadith is not authentic, that can not however remove hedgehog from the general permissibility of other animals.

It has been said that one of the reasons an animal is known to be forbidden is when there is a command for killing it. Examples of those animals are the Five Stubborn Animals, so also wall gecko and what is similar.

So also the prohibitions of killing some animal; the examples of animals that fall under that category are ants, bee, hoopoe, shrike, frogs and similar animals.

There is nothing in the Shari'ah indicating that it is forbidden to eat animals that have been commanded to be killed or those prohibited from being killed, that will then necessitate holding on to. Also, there are no logical or societal proofs supporting that. Therefore, there is no point at all making such opinions basis for prohibiting things.

Consequently, if an animal that has been commanded to be killed or forbidden from being killed falls within the category of dirty animals, then the prohibition for eating it is by virtue of the Glorious Verse [earlier cited with regards to dirty animals], and if there is nothing as such, the animal will be held permissible for consumption, in line with the basis for permissibility of something that we earlier mentioned, and because of the availability of sufficient evidence on it. That is why we said: other than those forbidden ones are permissible.

باب الصَّيْد

Chapter 14.2 Rulings on Hunting

As-Sayd



It is permissible to eat animals hunted with piercing weapons, or beasts and birds of prey provided the hunter mentions Allah's name while hunting, however, animals hunted in other than these ways must be slaughtered. When a trained dog and an untrained one follow each other, it is not permissible they both hunt together. When a trained dog or any other trained beast of prey ate from the animal it caught, it is then not permissible to eat such animal, in that sense; we consider the beast of prey had caught that animal for itself. When an animal is shot and found dead after some days, it is permissible to eat it provided it is not found dead in a pool of water and not yet smelling, and the hunter did not have any knowledge of it been shot by other than himself.

Explanation:

I say: As for the assertion that it is permissible to eat animals hunted with piercing weapons, or beasts of prey, that is because of the hadith of Abu Thalabah Al-Khushaniyy ﷺ that is recorded in Sahihayn. He ﷺ reported thus: I said to the Messenger of Allah ﷺ, we are in a place where hunting is a game, can I hunt with my bow, or my dogs; the trained and the untrained ones? Which of these is permissible?

The Messenger of Allah ﷺ said:

مَا صِدْتَ بِقَوْسِكَ فَذَكَرْتَ اسْمَ اللَّهِ فَكُلْ، وَمَا صِدْتَ بِكَلْبِكَ المُعَلَّمِ، فَذَكَرْتَ اسْمَ اللَّهِ عَلَيهِ فَكُلْ، وَمَا صِدْتَ بِكَلْبِكَ غَيْرِ المُعَلَّمِ فَأَدْرَكْتَ ذَكَاتَهُ فَكُلْ

Any animal you hunted with your bow and you mentioned Allah's name on it while shooting is permissible for you to eat, and any animal you hunted with your trained dog upon which you mentioned Allah's name while releasing the dog, is also permissible for you to eat. It is permissible for you to eat any animal your untrained dog caught and you were able to slaughter alive.

Also in Sahihayn, from the hadith of Adiyy bin Hatim ﷺ; he said, I said to the Messenger of Allah ﷺ: I used to release my trained dogs for hunting and mentioned Allah's name on the animals they caught. He ﷺ said:

إِذَا أَرْسَلْتَ كَلْبَكَ الْمُعَلَّمَ وَذَكَرْتَ اسْمَ اللَّهِ فَكُلْ مَا أَمْسَكَ عَلَيكَ

If you release your trained dogs while you have mentioned Allah's name upon it, then eat from any animal they catch.

I asked again: What if the dogs killed it? He ﷺ replied:

وَإِنْ قَتَلْنَ مَا لَمْ يَشْرَكْهَا كَلْبٌ لَيْسَ مَعَهَا

Even if they killed it, you can still eat it in as much as there is no other than your dogs among them

I asked further, I sometimes would throw a blunt object and hit my target.

He said:

إِذَا رَمَيْتَ بِالْمِعْرَاضِ فَخَزَقَ فَكُلْ وَإِنْ أَصَابَهُ بِعَرْضِهِ فَلاَ تَأْكُلْ

If you throw a blunt object and it pierces the animal, then eat it, but if it fell on the animal's side; (such that there was no piercing), do not eat it.

In another narration, the Prophet ﷺ said: When you release your hound dog, mention Allah's name upon it. If it catches an animal and you meet it alive with the dog, slaughter it. However, if you meet it dead and the dog did not eat from it, then it is permissible for you to eat it. Verily, the catching of the hound dog is its slaughtering.

Moreover, in his – Adiyy bin Hatim – other narration, recorded by Ahmad and

Abu Dawud, he asked, What if the hound dog killed it? He ﷺ replied: If it killed it and did not eat anything from it, it held it for you.

In Sahihayn, from his narration as well, the Messenger of Allah ﷺ was reported to have replied: Eat from that which it catches except it eats from it, if it eats from it, then do not eat from it; perhaps it caught that for itself.

In the narration of Ibn Abbas ﷺ, recorded by Ahmad, Adiyy mentioned that the Messenger of Allah ﷺ said: If you released your hound dog and it ate from what it caught, do not eat from it; it caught that for itself. But if you sent it and it did not eat from the animal it caught, it caught that for you.

In addition, Ahmad and Abu Dawud reported from the narration of Abdullah ibn Amr that Abu Athalabah Al-Khushaniyy ﷺ said, O Messenger of Allah, I have some dogs trained as hounds; teach me how to engage in hunting with them?

He ﷺ replied: Eat from what your trained dogs catch for you.

He asked again: O Messenger of Allah, does this apply to the animals I am able to slaughter and those I am not able to slaughter?

The Messenger of Allah ﷺ answered: Both, the ones you are able to slaughter and the ones you are not able to.

He asked again, What if the dogs ate from it?

The Prophet ﷺ replied: Even if they ate from it.

He also asked, O Messenger of Allah, tell me how to use my bow.

He replied, Eat from that which you kill with your bow.

He added, Those I am able to slaughter and those I am not?

He replied, The slaughtered and non-slaughtered.

He asked again, What if the animal escaped after shooting?

He replied, If it escaped and you saw it dead later, you can still eat it as long as it is not spoilt and you didn't see other than you shooting it.

Ibn Hajar ﷺ commented about the above hadith thus: Its chain is not bad.

However, this comment is questionable because there is Dawud bin Amr Al-Awdiyy Ad-Dimashqi in the chain of transmission of the hadith; there are some ill comments about him and he is controversial in his narration.

Though Abu Dawud also recorded the likes of this hadith from the report of Abu Thalabah, however, it will not strengthen the hadith because of its contradiction to the report of Sahihayn that prohibits eating from an animal the beast of prey has eaten from.

Ahmad and Abu Dawud also reported from the narrations of Adiyy bin Hatim ﷺ that the Messenger of Allah ﷺ said:

مَا عَلَّمْتَ مِنْ كَلْبٍ أَوْ بَازٍ ثُمَّ أَرْسَلْتَهُ وَذَكَرْتَ اسْمَ اللَّهِ عَلَيهِ فَكُلْ مَا أَمْسَكَ عَلَيْكَ

Whichever dog or hawk you trained as a hound, you then released to hunt for you while you have mentioned Allah's name on it, you can then eat from whatever animal it caught for you.

What establishes the issue furthermore is the fact that the Prophet ﷺ ate from an onager Abu Qatadah ﷺ killed with his spear as reported in sahih, and as mentioned earlier in this work in the book of Hajj. Allah, the Exalted, also mentioned hunting with the beasts of prey in His Gracious Book, He says:

وَمَا عَلَّمْتُمْ مِنَ الْجَوَارِحِ مُكَلِّبِيْنَ

...and those beasts and birds of prey which you have trained as hounds... [Al-Maidah: 4]

He, The Most High, then gave permission to eat from what they killed where He says:

فَكُلُوا مِمَّا أَمْسَكْنَ عَلَيْكُمْ

...so eat from of what they catch for you,... [Al-Maidah: 4]

Summarily, these evidences established the permissibility of eating any animal that was hunted with beasts of prey and piercing weapons provided Allah's

name is mentioned on it, and that whatever animal hunted with other than those must be slaughtered.

Also, the Prophet ﷺ placed blunt objects used in hunting in the position of piercing weapons if they really pierce, he ﷺ considered only the piercing effect as mentioned in the hadith of Adiyy bin Hatim رضي الله عنه.

In the report of Ahmad of Adiyy's narration, he رضي الله عنه said to the Prophet ﷺ: O Messenger of Allah, we are a people who engage in throwing while hunting, which of the animals killed this way is permissible for us to eat? The Prophet ﷺ replied: That which you slaughtered is permissible for you to eat, so also that which you threw at and got pierced, provided you mentioned Allah's name while throwing.

This hadith indicates that piercing is what is considered in killing, even if the killing is done with a heavy object. In the same vein, it is permissible to eat animals killed with modern guns that dispatch bullets and gunpowder, because the gunpowder and bullets even pierce deeper and wider than the piercing weapons. They will therefore have the same ruling with the piercing objects, even if the hunter could not get to slaughter the shot animals, it is enough that he mentions Allah's name while shooting.

As for the statement that it is not permissible to hunt with a trained dog followed by an untrained one, that is because of what was earlier mentioned in the hadith of Adiyy رضي الله عنه that the Prophet ﷺ said: ...in as much as other than your dogs do not follow them.

In the report of Sahihayn, he رضي الله عنه said, O Messenger of Allah, I used to release my dogs for hunting while I would have mentioned Allah's name while releasing it. The Prophet ﷺ replied: If you sent your dog and you have mentioned Allah's name on it and it killed the animal caught, eat it. However, if it ate from it do not eat, it caught that for itself. He asked further, I sometimes sent my dog and saw other dogs with it, and I would not know which of them actually caught it. The Prophet ﷺ answered: Do not eat it, you mentioned Allah's name on only your dog, not on others.

In another wording, he said: If you find other dogs with your dogs, do not eat the animal caught, you wouldn't know which of them killed it.

As for the statement that it is not permissible to eat from that which a trained dog caught; if it ate from it, is due to the evidences to be mentioned shortly. The evidences were also mentioned from the hadith of Abdullah ibn Amr رضي الله عنه.

As for the permissibility of eating from the animals shot and found dead later, that is due to the hadith of Thalabah Al-Khushaniyy رضي الله عنه from the Prophet ﷺ. He ﷺ said: If you throw your arrow on any animal and mentions

Allah's name while throwing it, but the animal escapes, you can eat it if you find it even after three days as long as it is not spoilt. Muslim and some other collectors recorded it.

Also in Sahihayn from the hadith of Adiyy bin Hatim ﷺ, he said: I asked the Messenger of Allah about hunting.

He ﷺ answered:

إِذَا رَمَيْتَ بِسَهْمِكَ فَاذْكُرِ اسْمَ اللَّهِ فَإِنْ وَجَدْتَهُ قَدْ قَتَلَ فَكُلْ إِلاَّ أَنْ تَجِدَهُ قَدْ وَقَعَ فِي مَاءٍ فَإِنَّكَ لاَ تَدْرِي الْمَاءُ قَتَلَهُ أَوْ سَهْمُكَ

When you want to throw your arrow, mention Allah's name on it; if you find it dead sometimes later, eat it, except you find it dead in water, in that instance you wouldn't know whether it was your arrow that killed it or the water.

In another narration from the report of Ahmad and Al-Bukhari, the Prophet ﷺ was reported to have said: If you shot any animal and found it dead after a day or two, eat it, in as much as you do not find other than your shot on it. But do not eat it if you found it dead in water.

Muslim collected the like of this narration as well. So also Al-Bukhari from his - Adiyy bin Hatim - narration, he said: we used to throw our arrows and traced the animals upon which we threw the arrows for two or three days, and later found them dead with the arrows on them. The Prophet ﷺ said: You can eat it if you like.

In the narration of At-Tirmidhi which he authenticated, Adiyy bin Hatim ﷺ said: O Messenger of Allah, I used to throw my arrow while hunting and sometimes found the animal upon which I threw dead the following day with my arrow on it. The Prophet ﷺ said: If you are sure that it was your arrow that killed it, and you did not see any sign of it been killed by a beast, eat it.

باب الذَّبح

Chapter 14.3 Slaughtering



Slaughtering is an act of killing animals by cutting or removing the jugular vein with a sharp object, a stone or the like while one mentions Allah's name; but not with a tooth or fingernail. In Islam it is prohibited to punish or torture an animal for sacrifice, as it is forbidden to sacrifice animals for other than Allah. Moreover, stabbing or shooting is permissible when slaughtering becomes difficult, and that stands in place of slaughtering completely. In addition, the slaughtering of a pregnant animal is the slaughtering of her foetus, and Islam considers dismembered body parts cut-off from a living animal as dead. Two dead animals and two forms of blood are permissible: the two dead animals are the fish and locust while the forms of blood are the liver and spleen. Lastly, eating a dead animal is permissible when the necessity arises.

Explanation:

I say: For the statement that the slaughtering is an act of killing animals by cutting the jugular vein while one mentions Allah's name, and that it could be done with a stone or the like, that is because of the hadith of Rafi bin Khadeej ﷺ. The hadith is recorded in Sahihayn and some other records. He ﷺ said to the Messenger of Allah ﷺ: O Messenger of Allah, we will embark on our journey to meet the enemies tomorrow, and we do not have a knife (to slaughter our animals if we want to eat while on journey, what shall we do?).

The Prophet ﷺ answered:

مَا أَنْهَرَ الدَّمَ وذُكِرَ اسْمُ اللَّهِ عَلَيْهِ فَكُلُوا مَا لَمْ يَكُنْ سِنًّا أو ظُفْرًا
وَسَأُحَدِّثُكُمْ عَنْ ذٰلِكَ أَمَّا السِّنُّ فَعَظْمٌ وأَمَّا الظُّفْرُ فَمُدَى الحَبَشَةِ

Eat from whatever is slaughtered by any tool that can slaughter as long as Allah's name is mentioned on it (while slaughtering), except what is slaughtered with a tooth or fingernail. And I shall inform you about that: for the tooth, it is a type of bone, and for the fingernail, it is the knife of the Abyssinians.

Abu Dawud also reported from the hadith of Anas and Abu Hurairah ﷺ concerning that; they both said: the Prophet ﷺ prohibited the strip of

Shaytan (satan): that is; the slaughtering that cuts only through the skin and does not penetrate the jugular vein.

There is a weak narrator in the chain of transmission of this hadith, and that is Amrr bin Abdillah As-Sanaani.

Ahmad and Al-Bukhari collected another hadith from the hadith of Kab bin Malik ﷺ regarding this matter. He ﷺ reported that they had a flock of sheep grazing at Sili[35], and one of their female slaves gazed at one of the sheep dying. She cut one side of a stone and slaughtered it. He – Kab bin Malik - then said to his people: Do not eat from it until I ask the Messenger of Allah ﷺ about that, or I send someone to ask him. He later asked the Prophet ﷺ and he permitted them to eat it.

Ahmad, An-Nasai and Ibn Majah also recorded from the hadith of Zaid bin Thabit ﷺ where he reported that a wolf wounded a sheep with his canine teeth, they then slaughtered the sheep with Marwah[36]; and the Messenger of Allah allowed them to eat it.

Ahmad, Abu Dawud, An-Nasai, Ibn Majah, Al-Hakim, and Ibn Hiban collected another hadith from the hadith of 'Adiyy bin Hatim ﷺ that he said: O Messenger of Allah, we used to go hunting and we would not have anything we can slaughter with except a Dhirar and some hard stick. The Messenger of Allah ﷺ replied: Slaughter with anything that can shed blood and mention Allah's name while slaughtering.

Ad-Dhirar mentioned in the hadith is a stone or clods of mud.

For the hadith of 'A'ishah ﷺ that is reported by Al-Bukhari and some other collectors that a group of people said to the Messenger of Allah ﷺ: Some people used to give us meats that we wouldn't know whether they mentioned Allah's name on the animal while slaughtering or not. The Messenger of Allah ﷺ informed them: You should mention Allah's name on it and eat. She added that the people were new in Islam.

It does not contradict the obligation of mentioning Allah's name on animals while slaughtering, it only gives the permissibility of eating from an animal one might not be sure whether Allah's name was mentioned upon it or not while slaughtering. That the person could mention Allah's name on it and eat.

As for the prohibition of punishing or torturing animals to be slaughtered, that is because of the hadith of Shaddad bin Aws ﷺ that the Messenger of Allah ﷺ said:

35 A mountain in Al- Madinah.

36 A sharp white stone that is used for cutting

إِنَّ اللَّهَ كَتَبَ الإِحْسَانَ عَلَى كُلِّ شَيْءٍ فَإِذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ وَإِذَا ذَبَحْتُمْ فَأَحْسِنُوا الذِّبْحَةَ وَلْيُحِدَّ أَحَدُكُمْ شَفْرَتَهُ وَلْيُرِحْ ذَبِيحَتَهُ

Verily, Allah enjoined kindness in everything; so when you kill, be kind in killing, and when you slaughter, be kind in slaughtering, let the person slaughtering sharpens his knife well and be lenient with the animal.

Ahmad, Muslim, An-Nasai, and Ibn Majah reported it.

Al-Imam Ahmad and Ibn Majah also reported from the hadith of Ibn Umar ﴿ﷺ﴾ that the Messenger of Allah ﴿ﷺ﴾ enjoined that knives are sharpened well and are held hidden from the animals. He ﴿ﷺ﴾ also said: When any of you slaughter, let him complete the slaughtering.

However, the chain of transmission of the hadith contains Ibn Lahiha, there are ill comments about him, and his case in narration is known among the people of knowledge.

As for the prohibition of mutilation, that is because of the authentic narrations that are reported in Sahih and other collections concerning mutilation generally, and that prohibition is applicable to both human being and animals.

As for the prohibition of sacrificing animals for other than Allah, that is because of the fact that the Messenger of Allah ﴿ﷺ﴾ cursed anyone who sacrifice for other than Allah, as reported by Muslim and some other collectors.

In addition, this saying of Allah also points to that:

وَمَا أُهِلَّ بِهِ لِغَيْرِ اللَّهِ

...and what is sacrifice for other than Allah [Al-Baqarah: 173]

The people of the period of ignorance used to seek closeness to their idols and the stars by sacrificing animals for them by either mentioning the names of the idols when slaughtering the animals or slaughtering the animals they wanted to sacrifice for specific idols. That is a form of worshipping other than Allah.

As for the permissibility of stabbing or shooting when slaughtering becomes difficult, that is because of the hadith of Al-Ushara on the authority of his

father, he said: I said to the Messenger of Allah ﷺ, O Messenger of Allah, does the slaughtering confined to only cutting through the neck or heart? He ﷺ replied: If you were to stab it on his thigh, it would have sufficed for you.

There are narrators in the chain of the transmission of this hadith whose states are unknown. Also, Abu Ushara's father is not known, and no one reported the hadith from him except Hammad bin Salamah, and he is unknown as well. Invariably his narration cannot stand as evidence.

Therefore, what could serve as evidence for this assertion is the hadith of Rafia bin Khadij ﷺ, which is reported in Sahihayn and some other collections. He said, we were with the Messenger of Allah ﷺ in a journey while a people's camel ran away and the people did not have any horse with which they could catch up with it. Someone from them then threw an arrow at it to stop it. The Messenger of Allah ﷺ then said:

إِنَّ لِهَذِهِ البَهَائِمِ أَوَابِدَ كَأَوَابِدِ الوَحْشِ فَمَا فَعَلَ مِنْهَا هَذَا فَافْعَلُوا بِهِ هَكَذَا

Verily, these animals manifest the behaviours of the wild animals sometimes, so if any of them demonstrates such act at any time, do to it the kind of what was done now.

As for the statement that the killing of a pregnant animal is the killing of her fetus, that is because of the hadith of Abu Saeed ﷺ, recorded by Ahmad, Abu Dawud, At-Tirmidhi, Al-Daraqutni and Ibn Hiban; and authenticated by Ibn Hiban, from the Prophet ﷺ that he said: Its slaughtering is the slaughtering of its mother.

This hadith has a number of chains supporting one another. In addition, there are lot of narrations under this section from a number of the companions ﷺ that give support to this hadith as well.

As for the statement that what is cut-off from a living animal is considered dead, that is because of the hadith of Ibn Umar ﷺ that the Prophet ﷺ said:

مَا قُطِعَ مِنْ بَهِيْمَةٍ وَهِيَ حَيَّةٌ فَمَا قُطِعَ مِنْهَا فَهُوَ مَيْتَةٌ

Whatever is cut-off from a living animal is dead

Ibn Majah, Al-Bazar, and At-Tabarani reported the hadith.

It has been said that this hadith is Mursal[37]. However, Ahmad, At-Tirmidhi, Abu Dawud, Ad-Daarimi and Al-Hakim reported another hadith from the hadith of Abu Waqid Al-Laythi ﷺ that the Prophet ﷺ said:

مَا قُطِعَ مِنَ البَهِيمَةِ وَهِيَ حيَّةٌ فَهُوَ مَيْتَةٌ

Whatever is cut-off from a living animal is dead

Ibn Majah, At-Tabarani and Ibn Adiyy reported the like of the hadith from the hadith of Tamim Ad-Dari ﷺ.

As for the statement that two dead animals and two forms of blood are permissible to eat, that is because of the hadith of Ibn Umar ﷺ that was reported by Ahmad, Ibn Majah, Al-Daraqutni, Al-Shafi'i and Al-Bayhaqi. He ﷺ narrated that the Prophet ﷺ said:

أُحِلَّ لَنَا مَيْتَتَانِ ودَمَانِ فَأَمَّا المَيْتَتَانِ فالحُوْتُ وَالجَرَادُ, وأَمَّا الدَّمَانِ فالكَبِدُ والطِّحَالُ

Two dead animals and two forms of blood are made permissible for us to eat; for the dead animals, they are the whale (fishes) and locust, while the two forms of blood are the liver and spleen.

There is Abdur-Rahman bin Zaid bin Aslam in its chain of transmission, and he is a weak narrator.

In addition, it is reported in Sahihayn from the hadith of Ibn Abi Awfaa ﷺ that he said: We fought with the messenger of Allah ﷺ seven battles, and we ate locust in all of them.

Also in Sahihayn from the hadith of Jabir ﷺ that a river ejected a dead whale

37 A Mursal hadith is a hadith that its narrator from the Prophet ﷺ is not mentioned in its chain of transmission by who narrated from him, rather he related it directly from the Prophet ﷺ. It is a form of weak hadith.

and some soldiers (among the companions of the Prophet ﷺ) ate from it. They then informed the Prophet ﷺ of what they did when they arrived from the journey, and he ﷺ said: Eat from it, it is a provision Allah ejected for you; you may give us some if you bring any with you. Some of the companions gave him ﷺ some.

So also in the Bukhari, Umar ﷺ was reported to have said concerning the word of Allah:

أُحِلَّ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ مَتَاعًا لَكُمْ وَلِلسَّيَّارَةِ

Lawful to you is (the pursuit) of water-game and its use for food – for the benefit of yourselves and those who travel... [Al-Maidah: 96]

Its game what is pursued from water, while its food what a river ejected by itself.

Also in the Bukhari, Ibn Abbas ﷺ was reported to have said: Its food refers to its dead, except that which has rotten.

Al-Bukhari also reported that he ﷺ said: Eat from whatever is pursued of the water-game by whomever, the Christians, the Jews, or the Pagans.

This is the opinion of the majority of scholars, they said: The dead of the water is permissible to eat, whether it died on its own or hunted. However, the Anafiyah School of Thought and the Adawiyahs hold that what is permissible of the dead of water is what a human being killed, rejected by the river itself or dropped off the river; but whatever died on its own, or killed by another animal is not permissible.

They made evidence for this opinion from what Abu Dawud reported from the hadith of Jabir ﷺ from the Messenger of Allah ﷺ with this wording:

مَا أَلْقَاهُ الْبَحْرُ أَوْ جَزَرَ عَنْهُ فَكُلُوهُ وَمَا مَاتَ فِيهِ فَطَفَا فَلاَ تَأْكُلُوهُ

Eat from whatever a river ejected or dropped off from it, but do not eat from whatever died in it or caught floating on the surface.

There is Yahya bin Sulaym in the chain of transmission of this hadith, and he

is weak in memory. The hadith has been reported with other than this chain of transmission, but it is also weak.

As for the statement that a dead animal is permissible in cases of necessity that is because of the word of Allah:

إِلَّا مَا اضْطُرِرْتُمْ إِلَيْهِ

Except under the condition of necessity [Al-Anaam: 119]

The permissibility of eating from the dead at the state of dreadful hunger has been mentioned in the hadith of Abu Waqid Al-Laythi, which is reported by Ahmad and At-Atabarani with the chain of transmission containing sound narrators. It has also been reported from the hadith of Jabir bin Samrah, recorded by Ahmad and Abu Dawud with the chain of transmission that does not have any bad comment; so also from the hadith of Al-Fujayi Al-Amir, reported by Abu Dawud.

There is a difference of opinion as to the quantity of the dead one can eat in this condition. However, what is apparent from the verse is that one can only eat the quantity that is capable of relieving the necessity. Islam lifts the necessity of eating from the dead animal when the situation is no longer compelling.

باب الضّيَافَة

Chapter 14.4 Accommodating the Guest



It is compulsory for whoever has a means of accommodating his visitors or guests to accommodate them, and the period for compulsory accommodation is three days; whatever he does thereafter is regarded as voluntary alms. It is not permissible that a visitor remains with his host until he inconveniences or discomforts him. If a capable host does not give necessary attention to his visitor with respect to what is compulsory on him to offer to his visitor, it is permissible that the visitor takes what suffices him from the host's wealth. Islam prohibits that anyone eats another person's wealth without his permission. He cannot milk his livestock without his knowledge, nor can he pluck or pick fruits from his farm. These acts are not permissible except for someone in dire need; he should call upon the owner of the farm to seek his permission. However, he can eat from the farm or the livestock what suffices him for the moment if the owner does not respond, but he should not take anything with him.

Explanation:

I say: As for the obligation of accommodating the visitors upon whoever is capable, that is because of the hadith of Uqbah bin Amir ﷺ in Sahihayn. He said: I said to the Messenger of Allah ﷺ, if you send us on an expedition and we stop over at a place whose people do not give attention to the visitors. What shall we do? The Prophet ﷺ replied:

إِنْ نَزَلْتُمْ بِقَوْمٍ ، فَأَمَرُوا لَكُمْ بِمَا يَنْبَغِي لِلضَّيْفِ ، فَاقْبَلُوا ، وإِنْ لَمْ يَفْعَلُوا ، فَخُذُوا مِنْهُمْ حَقَّ الضَّيْفِ الَّذِي يَنْبَغِي لَهُمْ

If you make a stopover at some people's place and they give you what is compulsory on them to render to you as visitors, take it, but if they do not give you, you can take your right from them as visitors; that which is compulsory on them to render to you.

There is another hadith in Sahihayn from the hadith of Abu Shurayh Al-Khazaai ﷺ concerning this issue where he reported that the Messenger of Allah ﷺ said:

مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الآخِرِ فَلْيُكْرِمْ ضَيْفَهُ جَائِزَتَهُ

Whoever believes in Allah and the Last Day should generously give his visitor his right.

The companions asked: O Messenger of Allah, what is his right?

The Prophet ﷺ replied:

مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الآخِرِ فَلْيُكْرِمْ ضَيْفَهُ جَائِزَتَهُ

A day and night, and the accommodation of a guest is for three days; whatever comes thereafter is alms and it is not permissible that the visitor over stays with the host till he inconveniences him.

Ahmad and Abu Dawud also reported from the hadith of Al-Miqdam ﷺ that he heard the Prophet ﷺ saying:

لَيْلَةُ الضَّيْفِ وَاجِبَةٌ عَلَى كُلِّ مُسْلِمٍ فَإِنْ أَصْبَحَ بِفِنَائِهِ مَحْرُوماً كَانَ دَيْناً لَهُ عَلَيْهِ إِنْ شَاءَ اقْتَضَاهُ وإِنْ شَاءَ تَرَكَهُ

Accommodating the visitor on the first night is an obligation on every Muslim. If the visitor wakes up at the host's dooryard deprived of this right, it becomes a debt upon the visitor. He can choose to pay it or leave it.

The chain of transmission of this hadith is authentic. Ahmad, Abu Dawud, and Al-Hakim recorded the like of this hadith from the report of Abu Hurairah ﷺ as well. Other narrations under this section support this opinion.

However, the majority of scholars are of the opinion that accommodating the visitors is only encouraged, not obligatory. They made evidence with the statement of the Prophet ﷺ in the hadith earlier mentioned:

...let the host generously give him his Al-Jaizah (right).

They argued that Al-Jaizah literally means a gift, or a means of tying the kinship, and that the ruling concerning these acts is that they are encouraged.

However, it is obvious that the statement does not negate the obligation of accommodating the visitors, the proofs cited actually pointed to that.

For instance, one cannot be said to be indebted to his visitor over an encouraged matter. So also the statement of the Messenger of Allah: It is an obligation, such statement is regarded as clear-cut evidence at instances of disagreement of this kind. In addition, the Prophet's statement ﷺ: ..whatever comes thereafter is alms giving also points to the obligatory effect, because that implies that what came before it was compulsory.

As for the prohibition of taking others property without their permission, that is because of the statement of Allah:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ

And do not eat up one another's property unjustly [Al-Baqarah: 118]

All the evidences that indicate the prohibition of eating others property point to this fact, because it is a form of property. Whatever is therefore excluded from that general ruling has been excluded because of the evidences that support excluding them, like a visitor who was denied of his right by a host whose accommodating him became compulsory upon, as we have earlier explained.

Some of the ways of taking other peoples properties without their permission are milking their livestock, taking or plucking their fruits, and fetching from their farms. All these acts and the likes are prohibited because of the general and specific evidences that forbade them.

From the general evidences is the verse mentioned shortly, so also the hadith of the farewell sermon of the Prophet's ﷺ and the likes.

However, for the specific evidences, there is the like of the hadith of Ibn Umar رضي الله عنهما in Sahihayn that the Prophet ﷺ said:

لاَ يَحْلِبَنَّ أَحَدُكُمْ مَاشِيَةَ أَحَدٍ إِلاَّ بِإِذْنِهِ أَيُحِبُّ أَحَدُكُمْ أَنْ تُؤْتَى مَشْرُبَتُهُ فَتُكْسَرَ خِزَانَتُهُ فَيُنْتَثَلَ طَعَامُهُ فَإِنَّمَا تَخْزُنُ لَهُمْ ضُرُوعُ مَوَاشِيهِمْ أَطْعِمَتَهُمْ فَلاَ يَحْلِبَنَّ أَحَدٌ مَاشِيَةَ أَحَدٍ إِلاَّ بِإِذْنِهِ

No one should milk another person's animal except with his permission; would any of you like that someone comes into his store, breaks his container, and takes away his food? The udders of the animals are the stores of their owners where their foods are kept, so no one should milk the animals of anyone else except with his permission.

In addition, Ahmad reported the hadith of Umayr, the servant of Abu Al-Lahm concerning the issue, he said:

I set out for a journey along with my master and some other people with the intention of migrating from Makkah to Al-Madinah. When we got closer to Al-Madinah I was left behind while they entered. There, I got hungry and at one point the hunger became very serious. While I was in that state, some of the people coming out of Al-Madinah passed by me and advised me to enter Al-Madinah and pluck from some of the fruits hanging down over some of the farm fences therein. I therefore entered a farm and plucked two fruits.

While I was there, the owner of the farm met me and dragged me to the Messenger of Allah ﷺ, and informed the Messenger of Allah ﷺ about what I did, and at the time I was having two clothes on me. The Messenger of Allah ﷺ said to me: Which of your clothes is better. I pointed to one of them, and He ﷺ then said: Take that which is better and give the owner of the farm the other. The man then released me to go on my way.

The chain of transmission of this hadith contains Ibn Lahihah[38]. Though Ahmad reported it with another chain, it also contains Abu Bakr bin Zaid Al-Muhajir whose state in narration is unknown.

In addition, the hadith can also be faulted with the fact that its chain contains Abdur-Rahman bin Ishaq bin Muhmad bin Zaid, who is also weak.

Nevertheless, Ahmad, At-Tirmidhi and Ibn Majah reported from the hadith of Ibn Umar ﷺ that the Prophet ﷺ was asked concerning someone who entered another person's farm when he inevitably needed to eat. The Prophet ﷺ replied:

38 Ibn Lahihah is a weak narrator. The author meant that the hadith is weak.

He can eat from it, but he should not take anything along with him.

Ahmad Abu Dawud and At-Tirmidhi also reported from the hadith of Samrah ﷺ that the Prophet ﷺ said:

إِذَا أَتَى أَحَدُكُمْ عَلَى مَاشِيَةٍ فَإِنْ كَانَ فِيهَا صَاحِبُهَا فَلْيَسْتَأْذِنْهُ فَإِنْ أَذِنَ لَهُ فَلْيَحْتَلِبْ وَلْيَشْرَبْ وإِنْ لَمْ يَكُنْ فِيهَا أَحَدٌ فَلْيُصَوِّتْ ثَلاَثًا فَإِنْ أَجَابَهُ أَحَدٌفَلْيَسْتَأْذِنْهُ وَإِنْ لَمْ يُجِبْهُ أَحَدٌ فَلْيَحْتَلِبْ وَلْيَشْرَبْ وَلاَ يَحْمِلْ

When any of you comes to a herd of cows (at serious hunger), he should seek the permission of the owner if he is present; if he permits him, he can then milk the animals and drink. However, if he is not there, he should shout out three times to call on him (perhaps he is around). If he responds, he should seek his permission; otherwise, he can milk (the animals) and drink, but he should not carry anything with him.

This hadith is from the Ahadith narrated by Al-Hasan from Samrah ﷺ, and the difference as to whether Al-Hasan heard hadith from Samrah is known.

Ahmad, Ibn Majah, Abu Yalaa, Ibn Hiban and Al-Hakim reported from the hadith of Abu Saeed ﷺ that the Prophet ﷺ said:

إِذَا أَتَى أَحَدُكُمْ حَائِطاً فَأَرَادَ أَنْ يَأْكُلَ، فَلْيُنَادِ صَاحِبَ الحَائِطِ ثَلاثاً ، فَإِنْ أَجَابَهُ وَإِلَّا فَلْيَأْكُلْ مِنْ غَيرِ أَنْ يُفْسِدَ ، وَإِذَا مَرَّ أَحَدُكُمْ بِإِبِلٍ فَأَرَادَ أَنْ يَشْرَبَ مِنْ أَلْبَانِهَا فَلْيُنَادِ يَا صَاحِبَ الإِبِلِ أَوْ يَا رَاعِيَ الغَنَمِ، فَإِنْ أَجَابَهُ وَإِلَّا فَلْيَشْرَبْ مِنْ غَيْرِ أَنْ يُفْسِدَ

When any of you comes to a farm in need of food, he should call upon the owner of the farm three times; if he responds, he should eat with his permission, otherwise, he can eat from it without causing any destruction to the farm. Also, if any of you passes by some camels and necessarily needs to drink from their milk, he should call upon the owner or the shepherd, and should not milk except with his permission if he responds to him; otherwise, he can milk without causing any harm to the animals.

Abu Dawud and At-Tirmidhi also reported concerning that from the hadith of Raafi ﷺ where he said:

I wanted some dates, so I threw at the dates on some of the Al-Sarees palm trees, the people caught me and dragged me to the Messenger of Allah ﷺ. The Prophet ﷺ asked me: Why did you throw at their dates?

I answered, O Messenger of Allah, I was very hungry. He ﷺ then said: Do not throw at the dates, eat from what fell-off the tree. May Allah provide satisfactory food and drink for you.

Abu Dawud and An-Nasai also reported from the hadith of Shurahbil bin Abbad, a story similar to the story of Raafi but it contains the statement of the Prophet ﷺ to the farm owner:

Neither did you educate him when he was not ignorant, nor did you feed him when he was hungry.

It is possible to merge the narrations that have come under this section together; it could be said that the Prophet ﷺ penalized Abu Al-Lahm because he did not make attempt to call upon the farm owner before eating from it.

However, assuming that the way of marrying those evidences together is not accepted, the narrations that state that permission is sought at necessity with the condition that one strives to call upon the owner should be given preference.

باب آداب الأكل

Chapter 14.5 Etiquette of Eating



It is legislated that the person who wants to eat mentions Allah's name, eats with his right hand, eats from the sides of the plate or its surroundings and not from the middle. In addition, it is legislated that he eats from his side (when he eats alone), licks his fingers and the plate. So also it legislated that he gives praises and thanks to Allah and say prayers when finished eating, and he should not eat while leaning or reclining on his sides.

Explanation:

I say: As for the legislation of mentioning Allah's name, that is because of the hadith of 'A'ishah ﵂, reported by Ahmad, Abu Dawud, Ibn Majah, An-Nasai, and At-Tirmidhi, and At-Tirmidhi authenticated it. She reported that the Prophet ﷺ said:

إِذَا أَكَلَ أَحَدُكُمْ طَعَامًا فَلْيَقُلْ بِسْمِ اللَّهِ فَإِنْ نَسِيَ فِي أَوَّلِهِ فَلْيَقُلْ بِسْمِ اللَّهِ عَلَى أَوَّلِهِ وَآخِرِهِ

When any of you wants to eat, let him say Bismillah — in the name of Allah; if he forgets to say it at the beginning, let him say 'Bismillah fee Awwalihi wa Akhirihi — in the name of Allah, for the start and for the end.

Muslim and some other collectors also reported from the hadith of Jabir ﵁ that he heard the messenger of Allah ﷺ saying:

إِذَا دَخَلَ الرَّجُلُ بَيْتَهُ فَذَكَرَ اللَّهَ عِنْدَ دُخُولِهِ وَعِنْدَ طَعَامِهِ قَالَ الشَّيْطَانُ لاَ مَبِيتَ لَكُمْ وَلاَ عَشَاءَ ، وَإِذَا دَخَلَ فَلَمْ يَذْكُرِ اللَّهَ عِنْدَ دُخُولِهِ قَالَ الشَّيْطَانُ أَدْرَكْتُمُ الْمَبِيتَ ، فَإِذَا لَمْ يَذْكُرِ اللَّهَ عِنْدَ طَعَامِهِ قَالَ أَدْرَكْتُمُ الْمَبِيتَ وَالْعَشَاءَ

If someone mentions Allah's name while he returns to his house (at night) and while he eats, Ash-Shaytan (Satan) will proclaim to his allies: there is no lodge or dinner for you here, but if does not mention Allah's name while eating, he will proclaim, there is a lodge and dinner for you.

Also, Muslim and some other collectors reported from the hadith of Hudhayfah bin al-Yamman ﷺ; he reported that the Prophet ﷺ said:

إِنَّ الشَّيْطَانَ لَيَسْتَحِلُّ الطَّعَامَ الَّذِي لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ

Verily the Shaytan (Satan) does partake of the food upon which Allah's name is not mentioned.

At-Tirmidhi collected that from the hadith of 'A'ishah ﷺ also, she said: the Prophet ﷺ used to eat along with six persons among his companions, a Bedouin Arab one day came and ate the same quantity of the food in just two morsels. The Prophet ﷺ then said: had he mentioned Allah's name, it would have been enough for you. At-Tirmidhi rated the hadith authentic. And there are other Ahadith under the section.

As for the legislation of eating with right hand, that is because of the hadith of Ibn Umar ﷺ, reported by Muslim and some other collectors that the Prophet ﷺ said:

لاَ يَأْكُلُ أَحَدُكُمْ بِشِمَالِهِ وَلاَ يَشْرَبُ بِشِمَالِهِ فَإِنَّ الشَّيْطَانَ يَأْكُلُ بِشِمَالِهِ وَيَشْرَبُ بِشِمَالِهِ

None of you should eat or drink with his left; verily Shaytan (Satan) eats and drinks with his left.

As for the legislation of eating by the sides of the plate and not from the middle, that is because of the hadith of Ibn Abbas that is reported by Ahmad, Ibn Majah and At-Tirmidhi, authenticated it, that the Prophet ﷺ said:

البَرَكَةُ تَنْزِلُ فِي وَسَطِ الطَّعَامِ فَكُلُوا مِنْ حَافَّتَيْهِ وَلا تَأْكُلُوا مِنْ وَسَطِهِ

The blessing descends to the middle of a meal; so eat from its sides, do not eat from the middle.

Abu Dawud reported it with these wordings:

إِذَا أَكَلَ أَحَدُكُمْ طَعَامًا فَلاَ يَأْكُلْ مِنْ أَعْلَى الصَّحْفَةِ وَلَكِنْ لِيَأْكُلْ مِنْ أَسْفَلِهَا فَإِنَّ الْبَرَكَةَ تَنْزِلُ مِنْ أَعْلاَهَا.

When any of you eats a meal, he should not eat from its topmost but from the lower; because the blessing gets down from the top.

As for the legislation of eating from one's side, that is because of the hadith of 'Umar bin Abi Salamah ﷺ recorded in sahihyan and some other records. He ﷺ said: I was a young boy in the house of the Prophet ﷺ, and while I was eating (one day) my hands was going round the plate, the Prophet ﷺ then said to me:

يَا غُلَامُ سَمِّ اللَّهَ وَكُلْ بِيَمِينِكَ وَكُلْ مِمَّا يَلِيكَ

O boy! Mention Allah's name, eat with your right hand, and eat from your side.

As for the legislation of licking one's fingers and the plate after eating, that is because of the hadith of Anas ﷺ, reported by Muslim and some other collectors of hadith that whenever the Prophet ﷺ finished eating he would lick his fingers three times, and he ﷺ said:

إِذَا وَقَعَتْ لُقْمَةُ أَحَدِكُمْ فَلْيَأْخُذْهَا فَلْيُمِطْ مَا كَانَ بِهَا مِنْ أَذًى وَلْيَأْكُلْهَا وَلاَ يَدَعْهَا لِلشَّيْطَانِ

When a morsel of food dropped from the food of any of you, he should take it and clean the dirt on it. He should then eat it, and should not leave it for Shaytan.

In addition, in Sahihayn from the hadith of Ibn Abbas ﷺ it is reported that the Prophet ﷺ said:

إِذَا أَكَلَ أَحَدُكُمْ طَعَاماً فَلاَ يَمْسَحْ يَدَهُ حَتَّى يَلْعَقَهَا أَوْ يُلْعِقَهَا.

When any of you eats, he should not clean his hand until he licks his fingers or get it licked.

Furthermore, Muslim and some other collectors recorded from the hadith of Jabir ﷺ that the Prophet ﷺ commanded that the fingers and plate are licked after eating, and he ﷺ said: You do not know which part of the food has the blessing of the food.

As for the legislation of giving praises to Allah and supplicating when finished eating, that is because of the hadith of Abu Umamah ﷺ, recorded by Al-Bukhari.

الْحَمْدُ لِلَّهِ كَثِيرًا طَيِّبًا مُبَارَكًا فِيهِ غَيْرَ مَكْفِيٍّ وَلاَ مُوَدَّعٍ وَلاَ مُسْتَغْنًى عَنْهُ رَبَّنَا.

Abundant and good Praises be to Allah, blessed was it (the food); Our Lord! Your favour cannot be dined, and neither can we do without it nor can we dispense with it.

Ahmad, Abu Dawud, At-Tirmidhi, Ibn Majah, An-Nasai, and Al-Bukhari in the collection titled At-Tariq, reported another hadith from the hadith of Abu Saeed ﷺ, he said: Whenever the Prophet ﷺ ate or drank, he would say:

الْحَمْدُ لِلَّهِ الَّذِى أَطْعَمَنَا وَسَقَانَا وَجَعَلَنَا مُسْلِمِينَ.

Praise be to Allah Who provides food and drink for us, and makes us believers.

Ahmad, Ibn Majah, and At-Tirmidhi also reported from the hadith of Muadh bin Anas ﷺ, which At-Tirmidhi authenticated, that the Prophet ﷺ said: Whoever eats a meal and says after finished eating;

(الْحَمْدُ لِلَّهِ الَّذِي أَطْعَمَنِي هَذَا وَرَزَقَنِيهِ مِنْ غَيْرِ حَوْلٍ مِنِّي وَلاَ قُوَّةٍ)
غُفِرَ لَه مَا تَقَدَّمَ مِنْ ذَنْبِهِ

(Praise be to Allah Who fed me with this food, and provided it for me without any power or might from me) His past sins will be forgiven.

Furthermore, Abu Dawud reported from the hadith of Ibn Abbas that the Prophet ﷺ said: Whenever any of you eats, he should say:

اللَّهُمَّ بَارِكْ لَنَا فِيهِ وَأَطْعِمْنَا خَيْرًا مِنْهُ.

O Allah! Bless it for us, and provide what is better than that for us.

And when he drinks milk, he should say:

(اللَّهُمَّ بَارِكْ لَنَا فِيهِ وَزِدْنَا مِنْه)
فَإِنَّه لَيْسَ شَيْءٌ يُجْزِئُ مِنَ الطَّعَامِ والشَّرَابِ إِلَّا اللَّبَنَ

(O Allah! Bless it for us, and provide more of it for us) There is nothing that can serve as both food and drink besides milk.

At-Tirmidhi also reported a similar hadith, and he rated it good. However, there is Ali bin Zaid bin Judaan in its chain of transmission and he is weak. That Ali bin Zaid also reported the hadith from another unreliable narrator,

Muhammad bin Harmalah; Abu Hatim[39] ﴿رحمه الله﴾ said in his respect: I do not know who he was.

As for the statement that the Prophet ﴿ﷺ﴾ did not use to eat in the reclining posture, that is because of the hadith of Abu Juhayfah ﴿رضي الله عنه﴾, reported by Al-Bukhari and some other collectors. He ﴿رضي الله عنه﴾ reported that the Prophet ﴿ﷺ﴾ said:

أَمَّا أَنَا فَلَا آكُلُ مُتَّكِئًا

As for me, I do not eat in the reclining posture.

39 He is Muhammad bin Idris bin Al-Mundhir, famous with the nickname Abu Hatim. He was a great scholar of hadith, and an associate of Imam Al-Bukhari and Muslim. He was a great scholar of hadith defects. The author ﴿رحمه الله﴾ meant that the narrator is weak, which depicts the weakness of the hadith, for Abu Hatim not to know whom he was.

15 كتاب الأشْربة
Book of Drinking

All intoxicants are forbidden; the small quantity of any substance its large quantity intoxicates is as well forbidden. It is allowed to soak fruits for drink in all kinds of vessels, but it is not permissible to soak two different kinds of fruit together in a container. It is forbidden to dilute alcohol for drink; but it is permissible to drink juice and wine before fermentation, and that is checked with the condition of not drinking any soaked fruits after three days. Furthermore, drinking has etiquettes, and they are as follows: gulping the drink three times before proper drinking, drinking with the right hand, and drinking in the sitting position. So also, when drinking in a group, the sharing must start from the right side, and their server is the last of them to drink. Allah's name should be mentioned while drinking and praises given to Him when finished drinking. In addition, it is forbidden to breathe or blow air into the vessel while drinking, so also to drink directly from the mouth of bottles. It is not permissible to drink any substance that contains impurity; but if the drink has solidified, the impurity is removed from it together with the surrounding areas that have been affected by the impurity. Lastly, it is forbidden to eat or drink from a gold or silver vessel.

Explanation:

I say: As for the assertion that all intoxicants are forbidden, that is because of the hadith that is reported by Muslim and some other collectors from the hadith of Ibn Umar ﷺ that the Prophet ﷺ said:

كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ مُسْكِرٍ حَرَامٌ.

All intoxicants are alcohol, so all intoxicants are forbidden.

The forbiddance mentioned here encompasses all forms of intoxications from the two known trees and other then them.

This statement of Allah, The Most High, also points to the prohibition:

إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ

Intoxicants, gambling, Al Ansâb, and Al Azlâm are an abomination of Shaytan's handiwork... [Al-Mâidah: 90].

In another narration of Muslim, it is reported that he ﷺ said:

كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ خَمْرٍ حَرَامٌ

All intoxicants are alcohol, and all alcohol is forbidden.

Also in Sahihayn from the hadith of 'A'ishah ﷺ, she said: the Prophet ﷺ was asked about Al-Biti, and that is the wine made from honey that the people of al-Yemen drink. The Prophet ﷺ replied:

كُلُّ شَرَابٍ أَسْكَرَ فَهُوَ حَرَامٌ

All drinks that intoxicate are forbidden.

The kind of this hadith is also reported in Sahihayn from the hadith of Abu Musa ﷺ. There are other Ahadith under this section as well.

As for the assertion that the small quantity of what its large quantity intoxicates is forbidden, that is because of the hadith of 'A'ishah ﷺ that is reported by Ahmad, Abu Dawud, and At-Tirmidhi, and At-Tirmidhi authenticated it; so also Ibn Hiban, but Al-Daraqutni claimed that it is a Mawquf[40] hadith. She ﷺ said, the Prophet ﷺ said:

40 Hadith Mawquf is the hadith that can only be linked to the companion, that is, it is not traceable to the Prophet ﷺ. Invariably it is a statement of the companion.

كُلُّ مُسْكِرٍ حَرَامٌ وَمَا أَسْكَرَ الْفَرْقُ مِنْهُ فَمِلْءُ الْكَفِّ مِنْهُ حَرَامٌ.

All intoxicants are forbidden; and every substance that its large quantity intoxicates, the handful of it is forbidden.

The chain of transmission of this hadith contains authentic narrators except Amr bin Salim Al-Ansaari, Al-Madani.

Al-Mundiri ﷺ commented about him thus: I do not know anyone who spoke about him.

Al–Hakim ﷺ also said: He is popular with his nickname. He meant by the nickname, Abu Uthman.

Ahmad, Ibn Majah, and Al-Daraqutni reported another hadith from the hadith of Ibn Umar ﷺ, and Al-Daraqutni authenticated it, that the Prophet ﷺ said:

مَا أَسْكَرَ كَثِيرُهُ فَقَلِيلُهُ حَرَامٌ.

Any substance that its large quantity intoxicates, the small quantity of it is forbidden.

Abu Dawud and At-Tirmidhi also reported the hadith, and At-Tirmidhi rated it to be a good hadith. Ibn Hajar said regarding it: "The men of the chain of transmission of Jabir's version are all trustworthy.

Ahmad, An-Nasai, and Ibn Majah also reported it from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather ﷺ. There are other Ahadith under the section as well.

As for the permissibility of soaking fruits in all kinds of vessels, that is because of the report of Muslim and some other collectors from the hadith of Buraydah ﷺ that the Prophet ﷺ said:

كُنْتُ نَهَيْتُكُمْ عَنِ الأَشْرِبَةِ فِي ظُرُوفِ الأَدَمِ فَاشْرَبُوا فِي كُلِّ وِعَاءٍ غَيْرَ أَنْ لاَ تَشْرَبُوا مُسْكِرًا

I have once forbidden you to drink except from a leather vessel, you can now drink from all kinds of containers, but you should not drink intoxicant.

Also in Muslim and some other collections, the Prophet ﷺ was reported to have said:

نَهَيْتُكُمْ عَنِ الظُّرُوفِ وإِنَّ ظَرْفًا لاَ يُحِلُّ شَيْئًا وَلاَ يُحَرِّمُهُ وَكُلُّ مُسْكِرٍ حَرَامٌ

I once prohibited you from soaking in various containers, but the containers cannot make something permissible or otherwise, it is enough to note that all intoxicants are forbidden.

There are other Ahadith under this section, as well, that clearly indicate that the earlier prohibition by the Prophet ﷺ from soaking fruits in the various vessels like Ad-Dubbaai[41], An-Naqeer[42], Al-Muzaffat[43], and Al-Hantam[44], and their likes had been abrogated, as recorded in the reports of Sahihayn and some other collections.

As for non-permissibility of soaking two different kinds of fruits together in a container, that is because of the hadith of Jabir رضي الله عنه reported in Sahihayn and some other collections. It is reported that the Prophet ﷺ forbade from soaking dates and raisins together, so also from soaking fresh dates and unripe date together.

41 Ad-Dubbaai is a kind of calabash that ferments drinks easily and strongly, and turns them alcoholic. Sharhu Al-Nawawi of Sahih Muslim 1/185]

42 An-Naqeer is a vessel made from palm tree trunk, dates are soaked in it and kept until it ferments and turns alcoholic. Sharhu Al-Nawawi of Sahih Muslim 1/185].

43 Al-Muzaffat or Al-Muqayyar is an ordinary container but coated with dark tar. The coating causes fermentation of any fruits soaked in it also if left for long. [Sharhu Al-Nawawi of Sahih Muslim 1/185].

44 Al-Hantam: The most authentic opinion of the scholars about the meaning of Al-Hantam, as mentioned by Al-Hafidh Al-Nawawi in his Sharhu of Sahih Muslim (1/185), is that it is an earthenware jar coated or painted with green pigment. The prohibition of this vessel is because of the coating that causes quick fermentation of any fruits soaked in it; and the drink turns alcoholic quickly. [An-Nihayah fee Garib Al-Hadith of Ibn Atheer, page 236]

The kind of this hadith is also reported in Sahihayn from the hadith of Abu Qatadah ﷺ. Muslim also reported it from the hadith of Abu Saeed, and another kind of it from the hadith of Abu Hurairah ﷺ. There are other Ahadith under the section as well.

The reason for the prohibition of soaking two different fruits together is that the mixture makes the drink to ferment quickly and turns alcoholic, and one might assume that it has not turned alcoholic considering the time it was soaked while it has actually turned.

However, Al-Nawawi ﷺ mentioned that the opinion of the majority of the scholar is that the prohibition is only for discouragement, and not for forbiddance; that it will be forbidden only when the drink intoxicates, which can be recognized easily.

But some of the Maliki School of Thought argued that the prohibition is for forbiddance. Nevertheless, what indicates the non-permissibility of soaking two different fruits together had been reported, whether from the narrations that were mentioned shortly or some others.

Such hadith is the hadith that was reported by An-Nasai and Ahmad from the hadith of Anas ﷺ. He ﷺ said: "the Prophet ﷺ forbade combining two different things while soaking, such that one of the two over rides the other.

The men of the chain of transmission are trustworthy.

As for the assertion that it is prohibited to dilute alcohol for drinking, or be used for soaking (eatable) substance, that is because of the hadith of Anas ﷺ that is reported by Ahmad, Abu Dawud, and At-Tirmidhi; who authenticated it, that the Prophet ﷺ was asked regarding alcohol been used for dilution or soaking. The Prophet ﷺ answered in negative.

Ahmad, Abu Dawud, and At-Tirmidhi ﷺ also reported from his hadith that Abu Talha asked the Prophet ﷺ concerning the orphans who inherited alcohol. The Prophet ﷺ answered him: dispose it off . Abu Talha asked again: What if we use it for soaking foods? The Prophet ﷺ replied: No.

Al-Mundhir ﷺ referenced this hadith to Muslim in his book Mukhtasar As-Sunan. There is another hadith under this section that is reported by Anas ﷺ as well, and it is collected by Al-Daraqutni. Ahmad reported the like of the hadith as well but from the report of Abu Saeed ﷺ.

As for the permissibility of drinking juice and wine before fermentation, that is because of the hadith of Abu Hurairah ﷺ that is reported by Abu Dawud, An-Nasai, and Ibn Majah. He ﷺ said: the Prophet ﷺ used to fast and break his fast at the breaking time with wine I prepared for him in a calabash. I

brought some for him ﷺ (one day) but it has started bubbling. The Prophet ﷺ said:

اضْرِبْ بِهَذَا الْحَائِطَ فَإِنَّ هَذَا شَرَابُ مَنْ لاَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الآخِرِ.

Pour it away; that is the drink of those who do not belief in Allah and the Last Day.

Ahmad also reported concerning the juice from Ibn Umar ﷺ that he said: "I will drink it in as much as it has not been over-taken by its devil, he was asked: when does its devil over-takes it? He replied: after three days.

Muslim and some other collectors reported from the hadith of Ibn Abbas ﷺ that juice used to be prepared for the Prophet ﷺ from raisin, and he would drink from it on the same day, the following day, and the third day before the night. He would then ordered that his attendant drank the remaining, or to be disposed of.

Abu Dawud mentioned that the order of the Prophet ﷺ for the attendant to drink the remaining juice was taste it in order to check whether it was suitable for drinking or not.[45]

As for the statement that the situation is checked by not drinking the juice after three days, that is because of the hadith of Ibn Abbas ﷺ mentioned shortly.

Moreover, Muslim and some others reported from the hadith of 'A'ishah ﷺ that she used to soak fruits for the Prophet ﷺ in the morning and he ﷺ would drink from it at night after his dinner, and if anything was left in the container, she would pour it away. She would then prepare another one for him at the night, and he ﷺ would drink it in the following morning after his lunch. She added: we used to wash the vessel both in the morning and at night.

However, this hadith does not contradict the hadith of Ibn Abbas mentioned earlier that he ﷺ used to drink the drinks prepared for him the day it was

45 Al-Hafidh Al-Nawawi explained the order of the Prophet ﷺ for the attendant to drink the remaining juice better, he said: "...and his statement, he would then order the attendant to drink the remaining, or to be disposed of, that implied that sometimes the attendant would drink it and sometimes it would be disposed off. And that depends on the state of the juice, if there was no changes on it or any indication of fermentation, it wouldn't be poured away because food wastage is forbidden, and the Prophet ﷺ would have refrained from drinking it only because he wished not to. Moreover, if the juice has changed or fermented, it would be poured away because it has become intoxicant and impurity, and the attendant could not drink it any longer. [Sharhu Al-Nawawi, 7/34]

prepared, the following day, and the third day till the night. That is because the additions contained in the hadith of the three days do not contradict the other hadith, so also because both of the narrations are authentic.

As for the fact that gulping the drink three times before proper drinking is one of the etiquettes of drinking, that is because of the hadith of Anas ﷺ in Sahihayn that the Prophet ﷺ used to breath out of the vessel three times.

In another version of Muslim, it is reported that he ﷺ used to breathe out of the drink three times. He ﷺ said concerning that: it gives satisfaction when drinking and it is also good for health.

The meaning of this hadith is that the Prophet ﷺ used to breath out of the vessel in between two gulps of drinking.

As for the prohibition of breathing into the vessel from which one drinks, that is because of the hadith of Abu Qatadah ﷺ in Sahihayn and some other collections that the Prophet ﷺ said:

إِذَا شَرِبَ أَحَدُكُمْ فَلا يَتَنَفَّسْ فِي الإِنَاءِ

When any of you drinks, let him not breath into the vessel.

It is also reported from the hadith of Ibn Abbas ﷺ by Ahmad, Abu Dawud, Ibn Majah, and At-Tirmidhi; who authenticated it, that the Prophet ﷺ forbade breathing into the container.

So also Ahmad and At-Tirmidhi reported from the hadith of Abu Saeed ﷺ; At-Tirmidhi authenticated it, that the Prophet ﷺ forbade breathing into the drink. Someone at the occasion asked, What should I do if I find dirt in my drink. The Prophet ﷺ replied: pour it away. The man asked again, "only one gulp of drink might not satisfy me The Prophet ﷺ said: remove the cup from your mouth (and pour out the dirt).

As for drinking with the right hand, that is because of the Ahadith mentioned under the section of eating concerning eating with the right hand.

As for drinking in the sitting position, that is because of the hadith of Abu Saeed ﷺ that is reported by Muslim and some other collectors that the Prophet ﷺ forbade drinking while standing.

Muslim also reported from the hadith of Abu Hurairah ﴿رضي الله عنه﴾ that the Prophet ﴿ﷺ﴾ said:

لاَ يَشْرَبَنَّ أَحَدُكُمْ قَائِمًا فَمَنْ نَسِيَ فَلْيَسْتَقِئْ.

None of you should drink while standing; whoever forgot and drank while standing should vomit it.

However, this hadith does not contradict the hadith of Ibn Abbas ﴿رضي الله عنهما﴾ in Sahihayn that the Prophet ﴿ﷺ﴾ drank from Zamzam water while standing. It does not also contradict what Al-Bukhari and some other collectors reported from Ali ﴿رضي الله عنه﴾ that he drank some drinks while he was standing and said: "some people hated drinking while standing, but the Prophet ﴿ﷺ﴾ did what you saw me doing. So also what Ahmad, Ibn Majah, and At-Tirmidhi reported; and At-Tirmidhi authenticated it, from Ibn Umar ﴿رضي الله عنهما﴾: we used to eat while walking and drink while standing during the life of the Prophet ﴿ﷺ﴾. That is because it is possible to merge the narrations together that the prohibition is only for discouragement.

Though his statement ﴿ﷺ﴾ whoever forgot and drank while standing should vomit it may indicate non-permissibility of drinking while standing at all, that may be for someone who opposed the Sunnah and deliberately drank while standing. That is because the Prophet's ﴿ﷺ﴾ deeds cannot oppose his statement that is meant for the Ummah, it can only limit the scope of its execution by the Ummah; that his deeds will be peculiar to him ﴿ﷺ﴾ as agreed upon under Islamic fundamentals.

As for the assertion that the sharing should start from the right, that is because of the hadith of Anas ﴿رضي الله عنه﴾, reported in Sahihayn and some other collections. He reported that some milk that had been diluted with water was brought to the Prophet ﴿ﷺ﴾ and at his right side was a Bedouin Arab while Abu Bakr was at his left. The Prophet ﴿ﷺ﴾ drank from the milk and gave it to the Bedouin Arab. He ﴿ﷺ﴾ then said: the right remains the right.

Also in Sahihayn from the hadith of Sahal bin Sad, it is reported that some drinks was brought to the Prophet ﴿ﷺ﴾ and at his right side was a young boy while there were some aged men at his left. The Prophet ﴿ﷺ﴾ then drank from the drink and said to the young boy: "do you permit me to give it to these people? the boy answered: By Allah! O messenger of Allah, I cannot prefer others to myself of my portion from you. The Prophet ﴿ﷺ﴾ then gave it to him.

As for the assertion that the server of a people should drink last, that is because of the hadith of Abu Qatadh ﷺ, reported by Ibn Majah, Abu Dawud, and At-Tirmidhi; which he authenticated. Al-Mundhiri mentioned that the men of its chain of transmission are trustworthy. He ﷺ reported that the Prophet ﷺ said: Toristia non explictem fugiant.

سَاقِي الْقَوْمِ آخِرُهُمْ شُرْبًا.

The server of a people is the last of them to drink.

Muslim also reported with the wordings, I Abu Qatadh ﷺ said: I shall not drink until the Prophet ﷺ drinks. The Prophet ﷺ then said:

إِنَّ سَاقِيَ الْقَوْمِ آخِرُهُمْ شُرْبًا.

Verily, the server of a people is the last of them to drink.

As for the legislation of saying Bismillah at the beginning and giving praises when finished drinking, that is because of the hadith of Ibn Abbas ﷺ, reported by At-Tirmidhi. He ﷺ reported that the messenger ﷺ said: Do not gulp the drink at once as camel does, but drink in two or three swallows; and mention Allah's name while drinking and give thanks when finished drinking.

Ahmad, Abu Dawud, At-Tirmidhi, Ibn Majah, An-Nasai, and Al-Bukhari in his book At-Tariq reported from the hadith of Abu Saeed ﷺ that when the Prophet ﷺ drank or ate, he used to say: Thanks be to Allah who provided the food and the drink for us and made us believers.

As for the prohibition of breathing into the vessel, the reason for that had been mentioned under the legislation of drinking in three gulps.

As for the prohibition of drinking directly from the water-skins, flasks or bottles, that is because of the hadith of Abu Saeed ﷺ in Sahihayn that the Prophet ﷺ forbade drinking from the mouth of the bottles.

In another narration that is also reported in Sahihayn, it was mentioned that the Prophet ﷺ forbade rolling up the mouth of the water-skins, and then drink from them.

In Al-Bukhari from the hadith of Abu Hurairah ﴿ﷺ﴾, it is reported that the Prophet ﴿ﷺ﴾ prohibited from drinking from the mouth of the bottles. Ahmad added to his version of this narration, Ayyub mentioned that he was told that a man drank from the mouth of a water-skin, a snake then came out of it.

Also in the Bukhari and some other collections, it is reported that Ibn Abbas ﴿ﷺ﴾ mentioned that the Prophet ﴿ﷺ﴾ forbade drinking from the mouth of the bottle.

However, these narrations do not contradict what Ibn Majah and At-Tirmidhi reported, and authenticated by At-Tirmidhi, from the hadith of Kabshah ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ entered her apartment and drank from a water-bottle hanged on the wall while he was standing. And that she then stood and cut-off the other side of the mouth of the bottle.[46]

As they do not also contradict the kind of the hadith that was reported by Ahmad, Ibn Shaheen, At-Tirmidhi in the book Ash-Shamahil, At-Tirmidhi, and at-Tahawi from the hadith of Ummu Sulaym.

So also its like reported by Abu Dawud and At-Tirmidhi from the hadith of Abdullah bin Busr.

That is because the Prophet's deed ﴿ﷺ﴾ can be held for the permissibility of that act, such that the narrations that have come with the ruling of prohibition will be understood as indicating discouragement.

In addition, the Prophet ﴿ﷺ﴾ might have done that for some personal excuses. Therefore, the hadith of the prohibition will be held for the situation when there is no excuse for one to do otherwise.

Nonetheless, Ibn Hazm is of the opinion that it is absolutely prohibited to drink from such containers, while Ahmad was reported to have the opinion that the prohibition had been abrogated.

As for the assertion that if an impurity fell into the drink, that it was then impermissible to drink it; except it were a solidified type. In that case, the impurity should be removed together with the surrounding areas affected by the impurity. That is be because of the hadith of Maymunah ﴿ﷺ﴾ in the Bukhari and some other collections that the Prophet ﴿ﷺ﴾ was asked about a rat that died in cheese. He ﴿ﷺ﴾ replied:

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46 Al-Nawawi mentioned that she cut-off the other side of the mouth of the bottle so that she could preserve the side from which the Prophet ﴿ﷺ﴾ drank, such that people could drink from only the side and therefore got the blessing (Al-Barakah) of the Prophet ﴿ﷺ﴾ [Sharhu Muslim, 13/194]. This way of seeking the blessing from someone was only permissible with respect to do the Prophet ﴿ﷺ﴾ in his person, that is, while he was alive, and no other.

أَلْقُوهَا وَمَا حَوْلَهَا فَاطْرَحُوهُ وَكُلُوا سَمْنَكُمْ

Cast it out together with the surrounding areas and throw it away, then eat your cheese.

Abu Dawud and An-Nasai also reported another version of the hadith, that the Prophet ﷺ was asked about a rat that died in cheese. He ﷺ replied: "If it were a solidified type, cast out the rat together with the surrounding areas; but if it were to be liquid, do not get close to it. Ibn Hiban authenticated it.

In addition, Ahmad, Abu Dawud, and At-Tirmidhi reported from the hadith of Abu Hurairah رضي الله عنه that the Prophet ﷺ was asked about a rat that died in cheese. The Prophet ﷺ answered:

إِنْ كَانَ جَامِدًا فَخُذُوهَا وَمَا حَوْلَهَا ثُمَّ كُلُوا مَا بَقِيَ وَإِنْ كَانَ مَائِعًا فَلَا تَأْكُلُوهُ

If it were a solidified type, cast it out together with the surrounding areas, then eat the remaining; but if it were to be liquid, do not eat it.

An-Nasai reported this hadith as well. The ruling concerning a rat is the same for its like among impurities and filths when they died in the cheese or the like.

As for the prohibition of eating or drinking from gold or silver containers, that is because of the hadith of Hudhayfah رضي الله عنه reported in Sahihayn and some other collections. He ﷺ reported that the Prophet ﷺ said:

لا تَلْبَسُوا الْحَرِيرَ وَلا الدِّيبَاجَ وَلا تَشْرَبُوا فِي آنِيَةِ الذَّهَبِ وَالْفِضَّةِ وَلا تَأْكُلُوا فِي صِحَافِهَا فَإِنَّهَا لَهُمْ فِي الدُّنْيَا وَلَنَا فِي الآخِرَةِ

Do not wear silk or silk brocade materials, and not drink from gold or silver containers or eat from the plates made from them; they are for them (the unbelievers) in this world and for us in the hereafter.

Also in Sahihayn from the hadith of Ummu Salamah ﴿رضي الله عنها﴾ that the Prophet ﴿ﷺ﴾ said:

إِنَّ الَّذِي يَشْرَبُ فِي إِنَاءِ الفِضَّةِ إِنَّمَا يُجَرْجِرُ فِي بَطنِهِ نارَ جَهَنَّمَ

He that drinks from a silver container is trailing Hellfire in his stomach.

In another version of Muslim, it has it that, he that eats or drinks from a gold or silver container...

Muslim also reported from the hadith of Al-Baraa bin 'Azib ﴿رضي الله عنه﴾. He said: the Prophet ﴿ﷺ﴾ prohibited us from drinking from silver containers, he ﴿ﷺ﴾ said:

مَنْ شَرِبَ فِيهَا فِي الدُّنْيَا لَمْ يَشْرَبْ فِيهَا فِي الآخِرَةِ.

Whoever drinks from it in this world will not drink from it in the hereafter.

Ahmad and Ibn Majah reported from the hadith of 'A'ishah ﴿رضي الله عنها﴾ the like of the hadith of Ummu Salamah ﴿رضي الله عنها﴾.

16 كتاب اللِّباس
Book of Clothing

Covering one's nakedness is compulsory both in public and in seclusion. It is not permissible for a Muslim man to wear pure silk material unless the size of which is not more than the size of four fingers put together, when used for medication or health reasons. It is also not used as a spread. It is also not permissible to wear a cloth dyed from saffron and a dress of fame. It is not permissible as well for a man to wear a woman's dress and vice-versa. In addition, it is forbidden for a man to wear gold ornaments or use ornaments from any other material.

Explanation:

I say: As for the obligation of covering one's nakedness both in public and in seclusion, that is because of the hadith of Bahz bin Hakim on the authority of his father, from his grandfather, collected by Ahmad, Abu Dawud , Ibn Majah, At-Tirmidhi, and Al-Hakim. At-Tirmidhi rated it to be a sound hadith and Al-Hakim authenticated it. He ﷺ reported: I asked the Prophet ﷺ, O messenger of Allah! Whom should we cover of our nakedness, and which part can we leave open? The Prophet ﷺ replied:

احْفَظْ عَوْرَتَكَ إِلاَّ مِنْ زَوْجَتِكَ أَوْ مَا مَلَكَتْ يَمِينُكَ.

Cover your nakedness except from your wife or whom your right hand possesses.

I said: O Messenger of Allah! What if someone is within a group of people?

He ﷺ replied:

إِنِ اسْتَطَعْتَ أَنْ لاَ يَرَاهَا أَحَدٌ فَلاَ يَرَيَنَّهَا

If you can keep yourself such that no one sees it, then do not allow anyone to see it.

I asked again: O Messenger of Allah! What if someone is alone in a place?

He replied:

فاللَّهُ تَبَارَكَ وتَعَالى أَحَقُّ أَنْ يُسْتَحْيَا مِنْهُ مِنَ النَّاس

Allah is more entitled to be ashamed of than people.

The people of knowledge differed about the limit of nakedness in a person, owing to the varying evidences concerning the issue. However, I have discussed the issue in details in the book Sharhu Al-Muntaqah.

As for the assertion that it is forbidden for a man to wear pure silk material of which the size is more than the size of four fingers put together, that is because of the hadith of Umar ﷺ in Sahihayn. He ﷺ reported that he heard the Messenger of Allah saying:

لاَ تَلْبَسُوا الْحَرِيرَ فَإِنَّهُ مَنْ لَبِسَهُ فِى الدُّنْيَا لَمْ يَلْبَسْهُ فِى الآخِرَةِ

Do not wear a silk material, for whoever wore it in the world will not wear it in the hereafter.

There is also the kind of this hadith in Sahihayn from the hadith of Anas ﷺ.

So also in Sahihayn and some other collections from the hadith of Ibn Umar ﷺ that Umar ﷺ saw a suit of brocade been displayed for sale, he then brought it to the Prophet ﷺ and said: O Messenger of Allah! Buy this suit and beautify yourself with it during festivals, as well as when you receive delegations. The Messenger of Allah ﷺ then said to him:

إِنَّمَا هَذِهِ لِبَاسُ مَنْ لَا خَلَاقَ لَهُ

Verily, this is a dress of who does not have a share of piety.

Ahmad, At-Tirmidhi, and An-Nasai also reported from the hadith of Abu Musa, and authenticated by At-Tirmidhi that the Prophet ﷺ said:

أُحِلَّ الذَّهَبُ وَالحَرِيرُ لِلإِنَاثِ مِنْ أُمَّتِي وَحُرِّمَ عَلَى ذُكُورِهَا

Gold and silk is made permissible for the female of my nation, but forbidden for its male.

There is Saeed bin Abi Hind, the narrator from Abu Musa, in the chain of transmission of the hadith, whom there are some comments about. Abu Hatim said about him: He did not meet Abu Musa. Nevertheless, Ibn Hazm authenticated the hadith.

In addition, it is reported from the hadith of Ali ﷺ, collected by Ahmad, Abu Dawud , An-Nasai, Ibn Majah, and Ibn Hiban that the Prophet ﷺ held a silk material on his right hand and a gold on his left, and then said: Verily, these two materials are forbidden for the male of my nation. Ibn Majah added in his report: but permissible for its female. The hadith is a sound hadith.

Al-Bayhaqi reported the like of the hadith with a sound chain of transmission. So also, al-Bazaar from the hadith of Amr bin Jarir Al-Bajali. However, there is Qays bin Abi Hazim in its chain of transmission.[47] There are other Ahadith under the section as well.

Al-Mahdi mentioned in the book Al-Fath that it is generally agreed upon by the scholars that silk is forbidden for men. He, however, stated in the book that Ibn Ulayah differed from this general opinion, among the scholars, but that there was a consensus over it after him. His opinion is therefore not relevant. He as well mentioned that Al-Qadi Iyaadh reported the permissibility of wearing a silk material from some people of knowledge. So also, he mentioned that Abu Dawud stated that twenty people among the Companions of the Prophet ﷺ wore it.

Furthermore, the people of knowledge differ about the permissibility of wearing clothes made from the interweaving of silk threads and some other threads. Those who bear the opinion of non-permissibility made evidence with the prohibition of the Prophet ﷺ of Al-Hullah As-Siyaraah, as reported

47 The author meant with this statement that the narrator has some problems that may necessitate the rejection of his narrations.

in Sahihayn from the hadith of Ali ﷺ. Moreover, there is a difference of opinion as to the meaning of Al-Hullah As-Siyaraah. Some people hold the opinion that it is a cloth with separated lines, while some others argued that it is one with several colours.

However, each of these two meanings contradicts the platform that Al-Hullah As-Siyaraah could be used to refer to pure silk, which is the assumption from using the hadith as the evidence for the prohibition of wearing clothes made from the interweaving of silk threads and other threads.[48]

Moreover, those who hold a contrary opinion, that is; the opinion which says the prohibition in respect of the silk material is not but with respect to pure silk made evidence with what is reported on the issue from Ibn Abbas ﷺ. Ahmad and Abu Dawud recorded it, and that is his statement that the Prophet ﷺ did not forbid except a pure silk material but the chain of transmission of this narration contains Khusawf bin Abdir-Rahman, who is weak.

This issue requires a very lengthy discussion, what we have said may suffice here.

As for the condition of the permissibility of wearing silk material if it is not more than the size of four fingers put together, that is because of the hadith of Umar ﷺ in Sahihayn and some other collections. He said: The Prophet ﷺ prohibited wearing of silk material except this size. He added: the Prophet ﷺ then raised his two hands and then put the pair of his fore and middle fingers together.

In another narration of Muslim and some other collectors, it is reported that the Prophet ﷺ forbade wearing of silk material except the size of two fingers, three or four.

As for the permissibility of wearing it for health reason or medication, that is because of the hadith of Anas ﷺ, in Sahihayn that the Prophet ﷺ permitted Abdur-Rahman bin Awf and Zubar ﷺ to wear silk because of the mange they suffered from.

As for the assertion that it is not permissible to take a silk material as a spread, that is because of the hadith of Hudhayfah ﷺ, reported by Al-Bukhari. He said: The Prophet ﷺ forbade us from drinking or eating from a gold or silver vessel; and from wearing silk and brocade, so also from sitting on it. He ﷺ said: It is for them in this world, and for us in the hereafter.

There are other narrations under this section that point to what this hadith

48 Al-Hullah As-Siyaraah can also be interpreted to mean the clothes ribbed with a silk material. This is actually the basis upon which the people who hold the position of non-permissibility of wearing clothes made from the interweaving of the silk threads and other threads based their argument.

indicated. In addition, this hadith is regarded as clear-cut evidence in the face of the difference of opinions under this section.

Furthermore, some people held the permissibility of taking a spread from a silk material. These people compared this issue with the issue of the spread that is taken from cloths having pictures of animate objects. Without doubt, such comparison is not acceptable; there is a clear text that prohibits this act unlike the one it was compared with.

Moreover, the majority of scholars hold to the prohibition. However, it is reported that Ibn Abbas and Anas ﷺ permitted the use of silk as a spread. So also, it is the opinion of the Anafiyah School of Thought and the Hadawiyah. The evidence of these schools is that making silk a seat or a sitting spread is an affront use of the material, which is contradictory to the beautification it is used for, and for which its usage is prohibited. However, such a statement is no evidence under the Islamic law even if there is nothing that contradicts it directly. What about the situation here where there is clear-cut evidence that opposes it on the issue?

As for the prohibition of wearing clothes dyed from saffron, that is because of the hadith of Abdullah ibn Amr ﷺ that is reported by Muslim and some other collectors. He ﷺ said: The Prophet ﷺ saw me wearing a pair of clothes dyed from saffron, he then remarked:

إِنَّ هَذِهِ مِنْ ثِيَابِ الْكُفَّارِ فَلاَ تَلْبَسْهَا

Verily, these are clothes of the unbelievers, do not wear them

In addition, Muslim and some others reported another hadith from the hadith of Ali ﷺ. He said: The Prophet ﷺ forbade me from wearing a gold ring and synthesized silk material, so also from reciting the Qur'an in the bowing and prostrating positions during Salah, and from wearing clothes dyed from saffron.

There are other Ahadith under this section. The saffron is a type of dye that gives clothes a specific kind of red colour. Moreover, the prohibition of wearing clothes dyed from this dye does not contradict what is reported concerning wearing pure red material, as recorded in Sahihayn from the hadith of Al-Barah ﷺ. He said: The Prophet ﷺ was of medium height, he has wide shoulders, and his hair was as long as the level of his earlobes; I saw him (one day) in a red dress, I never saw anything as beautiful as he was.

There are other Ahadith under this issue as well, but we can unite between these Ahadith that seem contradictory by saying that the red clothes that are prohibited are those that are dyed red with saffron, while those that are permissible are the originally red clothes.

As for the prohibition of wearing the dress of fame, that is because of the hadith of the Ibn Umar ﷺ that the Prophet ﷺ said:

مَنْ لَبِسَ ثَوْبَ شُهْرَةٍ فِي الدُّنْيا أَلْبَسَهُ اللَّهُ ثَوْبَ مَذَلَّةٍ يَوْمَ القِيَامَةِ

Whoever wore the dress of fame (in this world) Allah would clothe him the dress of humiliation on the Day of Resurrection.

Ahmad, Abu Dawud , An-Nasai and Ibn Majah reported the hadith, and the men of its chain of transmission are trustworthy. The dress of fame in this hadith refers to the dress that makes the person who wears it be specially recognized among other people. In addition, the prohibition includes any other wears or their likes that can bring about fame or make their owners be specially recognized among people. This is so because this reason for the prohibition is found in these items as well.

As for the fact that it is prohibited for men to wear women's wear and vice-versa, that is because of the hadith of Abu Hurairah ﷺ that is reported by Ahmad, Abu Dawud , and An-Nasai that the Prophet ﷺ cursed a man who wears a woman's dress, and woman who wears a man's dress.

So also in the Bukhari and some other collections, Ibn Abbas ﷺ was reported to have said: the Prophet ﷺ cursed the women that imitate men and the men that imitate women. There are other Ahadith under this section also.

As for the prohibition of taking gold as ornament by men, that is because of the Ahadith that prohibit taking gold as ornament; some of which had been mentioned earlier. In addition, the prohibition of wearing gold in those narrations is understood as the prohibition of using it as ornament. That is so because wearing of gold cannot be except for ornament. Therefore, what are designed on some silk wears or other clothes as gold are not in actual sense gold, they are silver; people only refer to them as gold.

Among the Ahadith that have come concerning the prohibition of gold is that which prohibits using gold rings, so also that which prohibits one from making gold ornaments for his love one.

Nonetheless, I have prepared a separate compilation concerning the prohibition of wearing gold; little or big, so also a separate compilation regarding women wearing of gold; where I discussed about whether it is permissible or not? Whoever wishes can refer to them.

17 كتاب الأُضْحِية
Book of Sacrifice

باب أحكام الأضحية
Chapter 17.1 Rulings on Sacrifice

The sacrifice of Al-Adha festival is an encouraged legislation on every family, and the least animal for each family is one sheep. The time for slaughtering is after the Salah (of Eid) on the day of slaughtering until the end of the last day of at-Tashriq1. The best animal for this sacrifice is a plump one, and it does not suffice for it in terms of ages that which is less than six months of the sheep's fold, or that which is less than one year of the goat family. It is not permissible to slaughter defective animals for this sacrifice, like one-eyed animal, a sick animal, a crippled animal, a skinny animal, an animal with a broken horn, or that with a chopped ear. One can eat from his slaughtered animal, give out from it as alms as well as keep some from it. Moreover, the slaughtering is better to be done at the prayer ground (after Salah), and anyone who intended to slaughter for this sacrifice should not cut his hair or nail from the beginning of the month of Dhul-Hijah until he slaughters the animal.

Explanation:

I say: As for the facts that sacrifice for Al-Adha festival is legislated for every family, that is because of the hadith of Abu Ayyub Al-Ansari ﷺ, who said: **During the time of the Prophet ﷺ a person would slaughter a ram for himself and his family.**

Ibn Majah and At-Tirmidhi collected the hadith, and At-Tirmidhi authenticated it. Ibn Majah also reported the kind of hadith from the hadith of Abu Sarihah with an authentic chain. So also, Ahmad, Abu Dawud, and An-Nasai from the hadith of Mikhnaf bin Sulaym that he heard the Messenger of Allah ﷺ said: O people! Sacrifice is enjoined upon every family once a year. The chain of transmission of this hadith contains Abu Ramlah, whose name is Aamir,

Al-Khatabi commented about him as thus: He is a narrator whose state is unknown.

There is a difference of opinion about the ruling of this sacrifice, the majority of scholars are of the opinion that it is a recommended act; not obligatory, while Rabia, Al-Awzai, Abu Hanifah, Al-Layth, and some scholars of the Maliki School of Thought hold the opinion that it is compulsory upon a well to do. That is also the opinion reported from Malik and An-Nakhiyy.

1- The days of At-Tashriq are the three days after the day of Eid Al-Adha.

The people who bear the opinion that it is obligatory made evidence with the kind of the hadith, Sacrifice is enjoined upon each family once a year that was mentioned shortly, and the like of the hadith of Abu Hurairah ﷺ reported by Ahmad and Ibn Majah, and authenticated by Al-Hakim. He ﷺ reported that the Prophet ﷺ said: Whoever has a means of slaughtering and does not do it should not attend Salah in our prayer ground.

Ibn Hajah mentioned that the men of the chain of transmission of the hadith are authentic narrators. However, scholars differ about whether the hadith was reported from the Prophet ﷺ as his statement or it was a statement only traceable to the Companion who reported it. What is more likely is that it was a statement of the Companion as claimed by Al-Thahawi and some other scholars.

Also, from the evidence of the people who hold that the sacrifice is compulsory is the statement of Allah, the most High:

فَصَلِّ لِرَبِّكَ وَانْحَرْ

Therefore turn in prayer to your Lord and sacrifice to Him [Al-Kawthar: 2]

This people inferred the obligation of the sacrifice from this verse. They claimed that the verse commands sacrifice and that a command demands obligation of the issue upon which it is stated. However, some people have said that the verse only talks about devoting sacrifice to Allah alone. That is, not to do the sacrifice to other than Allah if one were to do it, and not the obligation of doing it. Such way of making addresses has come from the hadith of Jundub bin Sufyan Al-Bajali ﷺ in Sahihayn and some other collections. He ﷺ reported that the Prophet ﷺ said:

مَنْ كَانَ ذَبَحَ قَبْلَ أَنْ يُصَلِّيَ فَلْيَذْبَحْ مَكَانَهَا أُخْرَى وَمَنْ لَمْ يَكُنْ ذَبَحَ حَتَّى صَلَّيْنَا فَلْيَذْبَحْ بِاسْمِ اللَّهِ

Whoever slaughters his sacrificial animal before the Salah should slaughter another one in its place, but whoever does not slaughter his (until he prays) should do it in the name of Allah.

In addition, there is the like of the hadith from Jabir ﷺ and other than him among the companion.

However, the majority of scholars that hold the opinion that Al-Adha sacrifice is not compulsory made the hadith of Jabir ﷺ that the Prophet ﷺ slaughtered a ram once, on behalf the people who did not slaughter among his companions a displacing factor for the obligation that could be inferred from other reports. Ahmad, Abu Dawud, and At-Tirmidhi reported this hadith. Ahmad, At-Tabarani, and Al-Bazar also reported its kind from the hadith of Abu Raafi with a sound chain.

Moreover, it is better we merge these narrations together rather than considering some of them negating the ruling suggested by some others. It can therefore be said from the hadith that mentioned that the Prophet ﷺ slaughtered a ram on behalf of some people among his companion, that these people were those who did not have means of slaughtering, as it related directly from the report …on behalf of the people who did not slaughter. So also the hadith, sacrifice is enjoined upon every family once a year. That is; the families that have the means. Nevertheless, the like of the hadith Sacrifice is enjoined on me but not obligatory on you and the like of it cannot stand as a supportive evidence on this issue because the chain of transmissions of those narration are defective; some of their narrators are said to be liars while others are weak narrators.

As for the fact that the least number of animal for a family is one, that is because of what will be mentioned shortly concerning that.

As for the assertion that the time for slaughtering is after the Eid prayer, that is because of the statement of the Prophet ﷺ

مَنْ كَانَ ذَبَحَ قَبْلَ أَنْ يُصَلِّيَ فَلْيَذْبَحْ مَكَانَهَا أُخْرَى وَمَنْ لَمْ يَكُنْ ذَبَحَ حَتَّى صَلَّيْنَا فَلْيَذْبَحْ بِاسْمِ اللَّهِ

Whoever slaughters his sacrificial animal before the Salah should slaughter another one in its place, but whoever does not slaughter his (until he prays) should do it in the name of Allah.

The hadith is reported in Sahihayn as mentioned shortly. There are other Ahadith under this section. It is mentioned in some of the Ahadith that the prayer that is given this consideration is that of the Imam.

As for the statement that the time for slaughtering extends to the end of the last day of At-Tashriq, that is because of the hadith of Jubayr bin Mutim ﷺ from the Prophet ﷺ that he said: All the days of At-Tashriq are for slaughtering.

Ahmad, Ibn Hiban in his book As-Sahih, and Al-Bayhaqi reported it. The hadith has other supportive chains. It has also been reported from the hadith of Jabir and some other companions ﷺ. It has also been reported as the opinion of a large number of the companions and some of the people that came after them. Nevertheless, there is a registered difference of opinion on the issue.

As for the assertion that the best animal for sacrifice is a plump one, that is because of the hadith of Abu Raafi ﷺ that the Prophet ﷺ used to buy two plump rams for his sacrifice. The hadith is by Ahmad and some other collectors with a sound chain of transmission. In addition, Al-Bukhari recorded another hadith from the report of Abu Umaamah bin Sahl ﷺ. He said: We, in Al-Madinah, used to fatten up our animals meant for sacrifice. Generally, Muslims used to fatten their animals.

As for the assertion that an animal that is less than six months old of the sheep's fold does not suffice for the sacrifice, that is because of the hadith of Jabir ﷺ, reported by Muslim and some other collectors. He mentioned that the Prophet ﷺ said:

لاَ تَذْبَحُوا إِلاَّ مُسِنَّةً إِلاَّ أَنْ يَعْسُرَ عَلَيْكُمْ فَتَذْبَحُوا جَذَعَةً مِنَ الضَّأْنِ

Do not slaughter for your sacrifice what is less than a year ram except when it becomes difficult for you to get one; you can then slaughter a six months old one.

Also, Ahmad and At-Tirmidhi reported from the hadith of Abu Hurairah ﷺ that he heard the Prophet ﷺ saying:

Indeed, a six months old ram suffices for sacrifice.

So also, Ahmad, Ibn Majah, Al-Bayhaqi and At-Tabarani reported from the

hadith of Ummu Bilaal bint Hilaal on the authority of her father that the Prophet ﷺ said: It is permissible to slaughter a six months old ram for the sacrifice.

Also, in Sahihayn from the hadith of Uqbah bin Aamir ﷺ; he said: the Prophet ﷺ shared sacrificial animals among his companions; I got a six month old ram from it. I said to the Messenger of Allah ﷺ; O Messenger of Allah, I got a six months old ram. He ﷺ replied: You can slaughter that.

The majority of scholars hold the opinion that a six months old ram is permissible for the sacrifice.

As for the assertion that what is less than one year of the goat family is not permissible, that is because of the hadith of Abu Burdah reported in Sahihayn and some other collections that he said to the Messenger of Allah ﷺ; O Messenger of Allah, I have a six months old goat. The Messenger of Allah replied him thus:

اذْبَحْهَا وَلاَ تَصْلُحُ لِغَيْرِكَ

You can slaughter it, but it is not permissible for other than you.

However, there is no problem concerning what is reported in Sahihayn and some other collections that the Prophet ﷺ gave Uqbah some sacrificial animals to share among the Companions, and he had an Atuud left with him from them. He then mentioned that to the Messenger of Allah ﷺ, and he ﷺ said to him: You can slaughter that. That is because an Atuud is a kid that is a year old.

Al-Bayhaqi reported in support of this explanation a hadith with a sound chain of transmission, that Uqbah ﷺ said; the Messenger of Allah ﷺ gave me some animals to share among my Companions and I had an Atuud left with me from the animals. The Prophet ﷺ then said to me: You can slaughter that for yourself, but that will not be permissible for other than you.

Al-Nawawi has reported a general agreement of the scholars upon the fact that it is not permissible to slaughter a six months old goat for the sacrifice.

As for the fact that it is not permissible to slaughter defective animals for the sacrifice, that is because of the hadith of Al-Baraah ﷺ that is reported by Ahmad and the people of As-Sunan, and authenticated by At-Tirmidhi, Ibn Hiban, and Al-Hakim. He mentioned that the Prophet ﷺ said:

أَرْبَعٌ لاَ تَجُوزُ فِي الأَضَاحِي الْعَوْرَاءُ الْبَيِّنُ عَوَرُهَا وَالْمَرِيضَةُ الْبَيِّنُ مَرَضُهَا وَالْعَرْجَاءُ الْبَيِّنُ ظَلَعُهَا وَالْكَسِيرَةُ الَّتِي لاَ تُنْقِي

Four kinds of animals are not permissible for sacrifice: a one-eyed animal that has obviously lost the eye, an obviously sick animal, an obviously lame animal, and an animal with a permanently broken part.

That is, the broken part that has made way with the bone marrow of the broken bone part.

In another narration, it has an emaciated animal instead of an animal with a permanently broken part.

Furthermore, Ahmad and the people of As-Sunan reported a hadith regarding this issue from the hadith of Ali ﷺ, and authenticated by At-Tirmidhi. He ﷺ said; The Prophet ﷺ forbade slaughtering an animal with pierced ear or horn for the sacrifice.

Qatadah mentioned that the piercing in this sense is a cut from the ear or horn that is up to the half size of it or more than.

From the narrations that have come regarding this issue as well is the hadith reported by Ahmad, Abu Dawud, Al-Hakim, and Al-Bukhari in his book At-Tariq, also from the hadith of Ali ﷺ. He said: the Prophet ﷺ forbade Al-Musfarah, Al-Mustahsilah, Al-Bakhqaah, Al-Mushayyiah, and Al-Kasirah kinds of animal for the sacrifice.

Al-Musfarah is an animal whose ear is completely chopped up, Al-Mustahsilah is one whose horn is totally cut off, Al-Bakhqaah is one whose eyes is gouged out, and Al-Mushayyiah is one that is so weak such that it cannot meet up with other animals while walking together, while Al-Kasirah is that with a permanently broken bone.

These explanations are originally from the hadith. Moreover, there are other Ahadith under the section.

As for the animal whose tail was cut off, Ahmad, Ibn Majah, and Al-Bayhaqi reported a hadith concerning that from the hadith of Abu Saeed ﷺ, he said: I once bought a ram for sacrifice; a wolf ran in and made away with its tail. I then informed the Prophet ﷺ concerning it; he ﷺ said: You can slaughter it. However, the chain of transmission of the hadith contains Jabir Al-Juafi, who is a very weak narrator.

As for the assertion that the person who made the sacrifice can eat from his sacrificial animal, gives alms from it, as well as keep from it, that is because of the hadith of 'A'ishah ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ said:

فَكُلُوا وَتَصَدَّقُوا وَادَّخِرُوا

Eat from it, give alms from it and you can keep from it as well.

The hadith is reported in Sahihayn, and there are other Ahadith under the section.

As for the fact that it is better to slaughter the animal at the prayer ground, that is because of the hadith of Ibn Umar ﴿ﷺ﴾, reported by Al-Bukhari and some others, that Prophet ﴿ﷺ﴾ used to slaughter his animals at the prayer ground.

As for the assertion that the person who intends to slaughter for Al-Adha festival should not cut his hair or nails since the beginning of the month of Dhul Hijah until he slaughters his animal, that is because of the hadith of Ummu Salamah, reported by Muslim and some other reporters. The Messenger of Allah ﴿ﷺ﴾ was reported to have said:

إِذَا رَأَيْتُمْ هِلاَلَ ذِى الْحِجَّةِ وَأَرَادَ أَحَدُكُمْ أَنْ يُضَحِّيَ فَلْيُمْسِكْ عَنْ شَعْرِهِ وَأَظْفَارِهِ

When you are aware of the appearance of the new moon of Dhul-Hijah, and any of you intends to slaughter for the Adha festival; let him withdraw from removing from his hair or nails.

In another narration of Muslim and some other collectors, it is also reported that the Prophet ﴿ﷺ﴾ said:

مَنْ كَانَ لَهُ ذِبْحٌ يَذْبَحُهُ فَإِذَا أَهَلَّ هِلاَلُ ذِى الْحِجَّةِ فَلاَ يَأْخُذَنَّ مِنْ شَعْرِهِ وَلاَ مِنْ أَظْفَارِهِ شَيْئًا حَتَّى يُضَحِّيَ

Whoever has a sacrificial animal he intends to slaughter should neither remove anything from his hair nor his nails from the beginning of Dhul-Hijah.

Scholars differ over this issue, Saeed bin Musayyib, Rabiah, Ahmad, Ishaaq, Dawud, and some of the Shafi'i School of Thought hold that it is forbidden that he takes anything from his hair and nails until he slaughters at the time of slaughtering, but Al-Shafi'i and his companions hold that it is only discouraged that he does that.

Al-Mahdi reported in the book al-Bahr from Al-Imam Yahyah, the Hadawiyah and Al-Shafi'i that not shaving or removing from the hair or nail for anyone who intends to slaughter for Adha is only a preferred act, while Abu Hanifah in his own opinion said it is not discouraged.

باب أحكام وَلِيمَة العرس والعقِيقَة

Chapter 17.2 Wedding Feast and Aqeeqah



It is a legislated act, and responding to the call for it, is compulsory. The first person to make the invitation should be given priority, then the closest neighbour. However, responding to the call is not permissible if it involves acts of disobedience.

The Aqeeqah (slaughtering for naming a child) is an encouraged act; two rams for a male child and one for a female one, on the seventh day of birth. The child is named on this day and his/her hair is shaved. The shaved hair is then weighed and alms is given with its worth in gold or silver.

Explanation:

I say: As for the legislation of the wedding banquet, that is because of the hadith of Anas ﷺ in Sahihayn and some other collections that the Prophet ﷺ said to Abdur-Rahman bin Awf: Prepare a wedding banquet even if it is just with a ram.

In addition, the Prophet ﷺ prepared wedding banquets at the instances of his marriage to each of his wives. He did it for Safiyayh with dates and Saweeq[49], as reported by Ahmad, Abu Dawud, At-Tirmidhi, Ibn Majah, and Ibn Hiban from the hadith of Anas ﷺ. Muslim and some other collectors also reported from the hadith of Anas as well, that the Prophet ﷺ provide for her (Safiyyah's) wedding banquet: dates, cheese, and ghee. The kind of this hadith is also reported in Sahihayn, and it is evident in the hadith that there is neither bread nor meat in the dish served in the occasion.

Also in Sahihayn, it is reported that the Prophet ﷺ did not prepare the like of the wedding banquet he prepared for Zaynab for other than her among his wives; he slaughtered a ram at the instance of her wedding.

Scholars differ about the ruling of preparing a wedding banquet at the instance of getting married; Malik held that it is compulsory, but it is said that the popular opinion known from him is that it is an encouraged act. The opinion that it is compulsory is also reported from Ahmad and some of the Shafi'i

49 Saweeq is a food prepared from barley or wheat flour.

School of Thought, as well as the people of Adh-Dhahir. However, the majority of scholars hold that it is a voluntary act, not compulsory.

As for the assertion that it is compulsory that one responds to the call for it if called, that is because of the hadith of Abu Hurairah ﷺ, reported in Sahihayn and some other collections that the Prophet ﷺ said:

شَرُّ الطَّعَامِ طَعَامُ الْوَلِيمَةِ يُدْعَى لَهَا الأَغْنِيَاءُ وَيُتْرَكُ الفُقَرَاءُ وَمَنْ لَمْ يُجِبِ الدَّعْوَةَ فَقَدْ عَصَى اللَّهَ وَرَسُولَهُ.

The worst banquet ever is a wedding banquet to which the rich people are invited while the poor are neglected; and whoever does not respond to it if called has committed a sin against Allah and His Prophet.

Also in Sahihayn from the hadith of Ibn Umar ﷺ it is reported that the Prophet ﷺ said:

إِذَا دُعِيَ أَحَدُكُمْ إِلَى الْوَلِيمَةِ فَلْيَأْتِهَا

If any of you is invited to a wedding banquet, let him respond to it.

In another narration of Muslim and some other collectors, from the hadith of Ibn Umar ﷺ as well, it is reported that the Prophet ﷺ said: Whosoever is called for a wedding banquet and did not respond has committed a sin against Allah and His Prophet.

Also in Muslim and some other collections form the hadith of Jabir ﷺ it is reported that the Prophet ﷺ said:

إِذَا دُعِيَ أَحَدُكُمْ إِلَى طَعَامٍ فَلْيُجِبْ فَإِنْ شَاءَ طَعِمَ وَإِنْ شَاءَ تَرَكَ

If any of you is invited for a banquet let him respond; if he wishes he can eat and if he does not, he should leave it.

In another narration of Abu Hurairah ﷺ, reported by Muslim and others, it is reported that the Prophet ﷺ said:

إِذَا دُعِيَ أَحَدُكُمْ فَلْيُجِبْ فَإِنْ كَانَ صَائِمًا فَلْيُصَلِّ وَإِنْ كَانَ مُفْطِرًا فَلْيَطْعَمْ

If any of you is invited for a banquet, let him respond; if he is fasting he should pray for the people, otherwise, he should eat.

Furthermore, Ibn Abdil-Barr, Al-Qadhi Iyaadh, and Al-Nawawi reported the agreement of the scholars upon the obligatory of responding to the wedding invitation. However, it is mentioned in the book Al-Fath that this agreement is questionable. Nevertheless, this agreement is correct; the popular opinion among the scholars is that attending the occasion, when invited, is compulsory. The majority of scholars of the Shafi'i and Hanbali Schools of Thought even hold that it is compulsory on every individuals invited; that is, it is not an obligation which the sin of neglecting or not performing it will be lifted if some people among the concerned persons carry it out. Rather it requires everyone involved to carry out the obligation. That is the opinion of Malik too.

Some of the scholars of the Shafi'i and Hanbali Schools of Thought mentioned that it is only an encouraged act. It is also reported in Al-Fath that Al-Itrah and Al-Shafi'i are of the opinion that responding to a wedding invitation is only encouraged like other kinds of invitation.

Nonetheless, the evidences that were mentioned indicate the obligation, particularly because it was mentioned that whoever refused to respond to it has committed a sin against Allah and His Prophet ﷺ.

But there is a disagreement among the scholars concerning other invitations; is responding to them compulsory as well or not? The scholars who hold that responding to them is also compulsory made evidence with the absolute proofs from the evidences earlier mentioned, while those who said it is not compulsory argued that the absolute proofs should be understood as explaining those other proofs that stated the obligation of responding to the wedding banquet.

Moreover, I have discussed this issue in my book Sharhu Al-Muntaqah, and I stated which the correct opinion is.

As for the assertion that the first person to make an invitation should be given priority of response; followed by the closest neighbour, that is because of the hadith of Humayd bin Abdir-Rahman Al-Humayree, who reported from

someone among the companions of the Prophet ﷺ that the Prophet ﷺ said: If two invitations are made to you at the same time, give priority to the one whose house is the closest to you, because he is your closest neighbour among them; however, if one of the invitations is made first, attend that which came first.

Ahmad and Abu Dawud reported this hadith, but there is Yazid bin Abdir-Rahman Ad-Dalaanee in its chain. Scholars differ about his authority; Abu Hatim said he is a reliable narrator while Ibn Hiban said he is weak.

Al-Bukhari and some other scholars recorded from the hadith of 'A'ishah رضي الله عنها that she asked the Prophet ﷺ concerning an issue related to this. She asked: I have two neighbours; to whom should I give alms among them? The Prophet ﷺ replied: Give the one whose door is the closest to you.

The ruling in this hadith considers the person whose door is the closest, which supports the opinion in this section.

As for the assertion that one should not attend a wedding banquet if it involves disobedience acts, that is because of the hadith Ali رضي الله عنه, reported by Ibn Majah with a chain of transmission whose narrators are those of the two authentic books of hadith. He said: I prepared a meal and invited the Prophet ﷺ. The Prophet ﷺ came but saw some pictures in this house, he then returned immediately.

Abu Dawud, An-Nasai, and Al-Hakim also reported from the hadith of Ibn Umar رضي الله عنهما. He said: The Prophet ﷺ forbade eating in two states: the state of dining out in a restaurant where alcohol is been served and the state of eating while lying down.

There is a disconnection in the chain of transmission of this hadith. However, the prohibition of sitting in a dining place where alcohol is been served has come from the hadith of Umar رضي الله عنه, reported by Ahmad, but its chain is weak. Nevertheless, At-Tirmidhi has reported the like of the hadith from the hadith of Jabir رضي الله عنه with a chain he ruled upon to be good. Ahmad, An-Nasai, At-Tirmidhi and Al-Hakim reported it from his hadith as well, and as one traceable to the Prophet ﷺ. There are other Ahadith under this section as well.

The text of both the Qur'an and Sunnah that mention commanding good and forbidding evil also support this opinion, the like of that is the statement the Prophet ﷺ:

مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ وَذَلِكَ أَضْعَفُ الإِيمَانِ

Whoever witnesses a disavowed thing should correct it with his hand, if he is incapable of doing that, let him correct it with his tongue, if he is incapable of doing that as well, let him do that with his mind; and that is the weakest of faith.

This hadith is reported in Sahihayn.

As for the aqeeqah (slaughtering for naming a child), the fact that it is a legislated act is indicated in the hadith of Salman bIn Aamir Ad-Dhabiyy ﷺ, reported by Al-Bukhari and some other scholars. He said, the Prophet ﷺ said:

مَعَ الغُلامِ عَقِيْقَةٌ فَأَهْرِيقُوا عَنْه دَماً وأَمِيطُوا عَنْه الأَذَى

The aqeeqah is legislated for a new born baby, so slaughter on his behalf and relief him of the harm (shave his hair).

Ahmad and the people of As-Sunan also reported another hadith from Al-Hasan on the authority of Samrah ﷺ, authenticated by At-Tirmidhi, Al-Hakim, and Abdul-Haq. He said, the Prophet ﷺ said:

كُلُّ غُلامٍ رَهِينَةٌ بِعَقِيقَتِهِ تُذْبَحُ عَنْهُ يَوْمَ سَابِعِهِ ويُسَمَّى فِيهِ ويُحْلَقُ رأسُهُ

Every new born baby is held a mortgage in respect of his aqeeqah; it (the animal, which is called 'aqeeqah) should therefore be slaughtered on his behalf on the seventh day, so also his hair be shaved and be named.

The problem regarding this hadith is it being the narration of Al-Hasan from Samurah. However, it has been clarified that Al-Hasan heard it from Samurah, but it is said that he did not hear from Samurah except this hadith.

However, Ahmad, Abu Dawud, and An-Nasai reported from the hadith of Amr

ibn Shuaib on the authority of his father, who also reported from his father. He said, the Prophet ﷺ was asked concerning al-aqeeqah, he ﷺ replied: I do not like Al-Uquuq—ingratitude, as if he hated the name. They then said, O Messenger of Allah, we are asking about someone who got a new baby! He ﷺ then said:

مَنْ أَحَبَّ مِنْكُمْ أَنْ يَنسُكَ عَنْ وَلَدِهِ، فَلْيَفْعَلْ عنِ الغُلامِ شَاتَانِ مُكَافَأَتَانِ، وعنِ الجَارِيَةِ شَاةٌ

Whosoever among you wishes to do the sacrifice at the instance of the birth of his new baby should do it, two rams for a male child and one for a female one

This hadith shows that the Ahadith that came regarding the fact that a baby is held a mortgage in respect of his aqeeqah do not indicate that the aqeeqah is compulsory, but that it is recommended.

As for the assertion that the recommendation is two rams for a male child and one for a female one, that is because of the hadith of Amr ibn Shuaib that was mentioned shortly, and the hadith of 'A'ishah ﷺ that is reported by Ahmad, At-Tirmidhi, Ibn Hiban and Al-Bayhaqi; and authenticated by At-Tirmidhi. She said, the Prophet ﷺ said:

عَنِ الغُلامِ شَاتَانِ مُكَافَأَتَانِ وعَنِ الجَارِيَةِ شَاةٌ

Two rams of a similar size for a male child, and one for a female.

Ahmad, An-Nasai, At-Tirmidhi, Al-Hakim, and Al-Daraqutni reported the like of this hadith, and At-Tirmidhi authenticated it, from the hadith of Ummu Kurz Al-Kabiyah.

These Ahadith do not however contradict what Abu Dawud and An-Nasai reported from the hadith of Ibn Abbas ﷺ, authenticated by Abdul-Haq and Ibn Daqeeq Al-Eid that the Prophet ﷺ slaughtered one ram each for both Hasan and Husayn. That is because the Ahadith that were mentioned earlier contained additional information. So also because they came as commands for the Ummah, unlike this hadith that was reported as his act ﷺ. These two principles are as established in the knowledge of Islamic fundamentals.

There is a consensus that the aqeeqah for a female child is a ram, but there is none for a male child; except that the majority of scholars hold that two rams should be slaughtered for a male. However, Imam Malik and the Ad-Dawiyahs hold that only one suffices for him.

As for the assertion that the baby is named and shaved for, on the seventh day, that is because of the hadith of Samrah that was mentioned shortly.

As for fact that alms is given with the worth of the shaved hair in gold or silver, that is because of the order of the Prophet ﷺ for Fatimah ﷺ to shave for Al-Hasan and give alms with the worth of the hair in silver.

It is reported by Ahmad and Al-Bayhaqi, but its chain of transmission contains Ibn 'Aqeel whom there are some ill comments about. However, the hadith reported by Malik, Abu Dawud in Al-Maraasil, and Al-Bayhaqi, from the hadith of Jafar bin Muhammad gives support to the hadith.

Al-Bayhaqi has some additions in his narration; he reported it from Jafar bin Muhammad on the authority of his father, who as well reported from his father, that Fatimah ﷺ weighed Al-Hasan, al-Husayn, Zaynab, and Ummu Kulthuum's hair and gave alms with the worth in silver.

In addition, At-Tirmidhi and Al-Hakim reported another hadith from the hadith of Ali ﷺ, he said, the Prophet ﷺ did 'aqeeqah for Al-Hasan with a ram, and said: O Fatimah! Shave his head and give alms with the silver worth of the weight of his hair. We (himself and his wife, Fatimah, ﷺ) then weighed the hair and the worth was one dirham or some dirhams.

At-Tabarani reported another hadith from the statement of Ibn Abbas ﷺ concerning this matter, in his book Al-Awsat . He said: Seven things are legislated to be done for a new baby at the seventh day: naming, circumcision, relieving him of the harm, puncturing the ear, al-aqeeqah, shaving the hair, smearing the baby with the blood of the slaughtered ram, and giving alms with the gold or silver worth.

There is Rawwad bin Al-Jarrah in the chain of transmission of the hadith; he is a weak narrator, but the remaining men of the chain of transmission are trustworthy narrators. Nevertheless, the hadith contains what confirms its weakness; it mentions some unpleasant things like, puncturing of the ear and smearing the baby with the blood of the slaughtered ram.

Abu Dawud and An-Nasai also reported another hadith, but from the hadith of Buraydah al-Aslami ﷺ. He said, During the period of Al-Jahiliyah, if anyone got a new baby he would slaughter a ram for him and smear his head with its blood; but when Allah blessed us with Islam, we would slaughter a ram at the instance of a baby birth and rub his head with Zaafaran.

Ibn Hiban and Ibn Sakan also reported the like of this hadith from the hadith of 'A'ishah ﴿رضي الله عنها﴾ and they authenticated it.

The Dhahiriyah School of Thought and Al-Hasan Al-Basari have the opinion that the aqeeqah is compulsory, while the majority of scholars opined that it is only a preferred act, but Abu Hanifah neither considered it a compulsory act nor a preferred one. Some other people opined that it is a voluntary act.

18 كتاب الطبّ
Book of Medication

Medical treatment is permissible, and not seeking for medical treatment born out of an exclusive trust in Allah is permissible for whoever is capable of patience. Medication is forbidden with forbidden items; it is discouraged to cauterize in treatment, but cupping is permissible. So also, incantation is permissible with acceptable wordings for the treatment of evil eyes attack and some others.

Explanation:

I say: As for the assertion that medication is permissible, that is because of what Muslim and some other collectors recorded from the hadith of Jabir ﷺ, that the Prophet ﷺ said:

لِكُلِّ دَاءٍ دَوَاءٌ فَإِذَا أُصِيبَ دَوَاءُ الدَّاءِ بَرِئَ بِإِذْنِ اللَّهِ

Every illness has its cure; if an appropriate medication is got for an illness, it is cured by Allah's grace, the Almighty.

Al-Bukhari and some other collectors also reported from the hadith of Abu Hurairah ﷺ that the Prophet ﷺ said:

مَا أَنْزَلَ اللَّهُ مِنْ دَاءٍ إِلَّا أَنْزَلَ لَه شِفَاءً

Allah did not cause any illness to come down except that He caused its cure to descend with it.

Ahmad, Abu Dawud, Ibn Majah, Ibn Hiban, At-Tirmidhi, and Al-Hakim reported from the hadith of Usamah ﷺ, and authenticated by At-Tirmidhi,

Ibn Khuzaymah and Al-Hakim. He said: A Bedouin Arab said to the Messenger of Allah, O messenger of Allah! Do we not seek medication for our illness? The Prophet ﷺ replied:

نَعَمْ عِبَادَ اللَّهِ تَدَاوَوْا ؛ فإِنَّ اللَّهَ لَمْ يَضَعْ دَاءً إِلَّا وَضَعَ لهُ شِفَاءً ؛ إِلَّا دَاءً وَاحِدًا ، قَالُوا يَا رَسُولَ اللَّهِ ! ومَا هُو ؟ قال : الهَرَمُ

Yes! O servants of Allah, seek medical treatment, verily; Allah did not cause any illness except He caused its cure with it, except one illness. They asked, O Messenger of Allah, which is that one? He ﷺ then replied: Old age.

Ahmad, Ibn Majah, and At-Tirmidhi reported from the hadith of Abu Khizamah, and rated to be a sound hadith by At-Tirmidhi.

He said: I said to the Messenger of Allah ﷺ, Do you see the incantations we say, the medications we seek for in order to treat our various illness, the protection we seek for against evils, do that prevent anything from Allah's predestination? The Prophet ﷺ replied: They are from Allah's predestination.[50]

As for the assertion that not seeking for medication that is born out of an exclusive trust in Allah is permissible; for whoever is capable of being patient, that is because of the hadith of Ibn Abbas ﷺ collected in Sahihayn and in some other collections. He ﷺ reported that a black woman came to the Prophet ﷺ and said: I get attacks of epilepsy and my body becomes uncovered; please invoke Allah for me. The Prophet ﷺ then said to her:

إِنْ شِئْتِ صَبَرْتِ ولَكِ الجَنَّةُ وإِنْ شِئْتِ دَعَوتُ اللَّهَ أَنْ يُعَافِيَكِ

If you wish you can choose to be patient and you will have the paradise; and if you wish, I supplicate to Allah to heal you.

She responded: I will be patient.

Also in Sahihayn from his hadith ﷺ, the Prophet ﷺ is reported to said:

50 This hadith is weak. Abu Khizamah is an unknown narrator.

يَدْخُلُ الجَنَّةَ مِنْ أُمَّتِي سَبْعُونَ أَلْفًا بِغَيرِ حِسَابٍ هُمُ الذِينَ لا يَسْتَرْقُونَ ولا يَتَطَيَّرُونَ ولا يَكْتَوُونَ وعَلَى رَبِّهِم يَتَوَكَّلُونَ

Seventy thousand people of my nation will enter the paradise without any accountability; they are the people who do not request others for incantation, or follow evil omens, or seek cure by cauterizing.

It should therefore be noted that this assertion does not contradict what was earlier mentioned about the order for seeking medication for illness; we can unite the two positions by saying that not seeking medication is only for who can patiently persevere as the hadith has it, If you wish, you can choose to be patient. However, if one cannot be patient over an illness, or the sickness causes serious difficulty, or the sign of non-contentment appears on the sick person, or the sick person becomes uncomfortable with the sickness, to seek for medication then becomes preferable because the preference of not seeking medication cannot be achieved with non-capability of patience.

As for the assertion that it is forbidden to seek medication with forbidden items, that is because of the hadith of Abu Hurairah ﷺ that the Prophet ﷺ forbade harmful drugs.

Muslim[51] and some others reported it. Abu Dawud also reported from the hadith of Abu Ad-Dardaa ﷺ that the Prophet ﷺ said: Verily, Allah caused of the illness and medication to come down, and assigned for every illness its cure. So, seek medication for your illness, but do not seek it from forbidden things.

The chain of transmission of this hadith contains Ismail bin Ayyaash.

Nevertheless, it has been authentically reported that the Prophet ﷺ prohibited medication with alcohol, as reported by Muslim and some other collectors. So also in the Bukhari from the hadith of Ibn Mas'ud ﷺ, it is reported that the Prophet ﷺ said:

إِنَّ اللَّهَ لَمْ يَجْعَلْ شِفَاءَكُمْ فِيمَا حَرَّمَ عَلَيكُمْ

Verily, Allah does not place your cure in what He prohibits for you.

51 Authentic, but Muslim did not record it. Al-Imam Ahamd, At-Tirmidhi, and Ibn Majah recorded it.

The majority of scholars are of the opinion of the prohibition of seeking medication from an impure (harmful) and unlawful drugs. This conclusion does not also contract the permission given by the Prophet ﷺ to seek medication from camel's urine, as reported in the Bukhari, because camel's urine is neither impure nor unlawful. Even if it is assumed that it is unlawful, the ruling of the specific overruling the general comes in.

As for the discouragement of cauterization, that is because of the hadith of Ibn Abbas رضي الله عنهما in the Bukhari and some other collections, that the Prophet ﷺ said:

الشِّفَاءُ فِي ثَلَاثَةٍ فِي شَرْطَةِ مِحْجَمٍ أَوْ شَرْبَةِ عَسَلٍ أَوْ كَيَّةٍ بِنَارٍ وَأَنَا أَنْهَى أُمَّتِي عَنِ الكَيِّ

Medication is got from three things, the cutting with a cupping knife, or the drinking of honey, or cauterizing with fire; I, however, prohibit my nation from cauterizing.

In another narration, it has it that, I do not like that I cauterize Ahmad, Abu Dawud, Ibn Majah, and At-Tirmidhi reported from the hadith of Imran bin Husayn رضي الله عنهما and At-Tirmidhi authenticated it, that the Prophet ﷺ forbade cauterizing, but we cauterized and neither did we succeed in it nor did it benefit us.

However, it has come from the Sunnah what indicates that the prohibition regarding cauterization is not for forbiddance; rather it is only for discouragement. Some of these proofs are what Muslim and some others reported from the hadith of Jabir رضي الله عنه that the Prophet ﷺ cauterized Sad bin Muaadh رضي الله عنه twice in respect of the cut he sustained in his arm's vein. So also what At-Tirmidhi reported and authenticated from the hadith of Anas رضي الله عنه that the Prophet ﷺ cauterized Isad bin Zuraarah رضي الله عنه in respect of a thorn-pierce he sustained.

The reason why this way of proffering medication is discouraged is that it is a form of punishment with fire, and only Allah, the Creator of fire, punishes with fire; it is not permissible for other than Him. Some other reasons have also been mentioned for the discouragement. Some other people have also tried to unite the contradictory narrations under the section in other than the way we did.

As for the fact that cupping is permissible, that is because of the hadith of Jabir رضي الله عنه in Sahihayn and some other collections. He said, I heard the Messenger of Allah saying:

إِنْ كَانَ فِي شَيْءٍ مِنْ أَدْوِيَتِكُمْ خَيْرٌ فَفِي شَرْطَةِ مِحْجَمٍ أَوْ شَرْبَةِ عَسَلٍ أَوْ لَذْعَةٍ بِنَارٍ تُوَافِقُ الدَّاءَ وَمَا أُحِبُّ أَنْ أَكْتَوِيَ

If any of your (ways of seeking) medication is beneficial, they are but in the cutting with a cupping knife, or the drinking of honey, or the burning with fire, but I do not like that I cauterize.

The like of the hadith has as well been mentioned earlier from the report of Ibn Abbas ﷺ.

It is also reported from the hadith of Anas ﷺ by At-Tirmidhi and Abu Dawud with a sound chain of transmission that the Prophet ﷺ used to do cupping on his two jugular veins and on the upper part of back bone, on the seventeenth, nineteenth, or eleventh day of the month.

Abu Dawud also reported from the hadith of Abu Hurairah ﷺ that the Prophet ﷺ said: Whoever does cupping on the seventeenth, or on the nineteenth, or on the twenty-first of the month will be cured from every illness.

The chain of transmission of this hadith is acceptable. Some other Ahadith have mentioned specific days wherein cupping is preferable to be done. However, we do not intend in this discussion except to establish the permissibility of cupping.

As for assertion that an incantation with acceptable wordings is permissible, that is because of the hadith of Anas ﷺ, reported by Muslim and some others. He said: the Prophet ﷺ permitted an incantation to be read for the cure of evil eyes attack, Al-Humah, and An-Namlah.

Al-Humah is the poison from the bite of poisonous animals while An-Namlah is an ulcer on any side of the body.

Muslim and some other collectors also reported a hadith from the hadith of Awf bin Malik ﷺ, he said, we used to seek medication by incantation during the period of ignorance, (after our Islam) we said to the Messenger of Allah ﷺ, O Messenger of Allah, what do you see to this incantations? He replied:

اعْرِضُوا عَلَيَّ رُقَاكُمْ لاَ بَأْسَ بِالرُّقَى مَا لَمْ يَكُنْ فِيهِ شِرْكٌ

Present your incantation to me; there is nothing wrong with an incantation as long as it does not contain any act of disbelief.

Also in the Muslim from the hadith of Jabir ﷺ, he reported that the Prophet ﷺ forbade incantation, the clan of Amrr bin Hazm then came to him and said: O Messenger of Allah, we have some incantations we say for the cure of scorpion bite, and we learnt that you forbade incantations. They then presented their incantation to him. The Prophet ﷺ then said:

مَا أَرَى بَأْسًا مَنِ اسْتَطَاعَ مِنْكُمْ أَنْ يَنْفَعَ أَخَاهُ فَلْيَنْفَعْهُ

I do not see anything wrong in it; whoever is capable of assisting his brother, let him do.

Also in Sahihayn from the hadith of 'A'ishah ﷺ, she said: When any of the household of the Messenger of Allah ﷺ was sick, he would recite some prayers of exorcism and then spit on the person. So, when he ﷺ got sick; the sickness he died from, I also used to spit on him and rubbed him with his hands, because his hands were more blessed than mine.

Therefore, the proof that have come to indicate the prohibition of incantation, or that which suggests that it is an act of disbelief in Allah should be understood as prohibiting the unlawful incantation. Such as the incantations that contain the names of the demons, idols and the likes.

This is also what should be understood from the hadith of Al-Mugirah bin Shubah reported by Ahmad and Ibn Majah, and authenticated by At-Tirmidhi, Ibn Hiban, and Al-Hakim that the Prophet ﷺ said:

مَنِ اكْتَوَى أَوِ اسْتَرْقَى فَقَد بَرِىءَ مِنَ التَّوَكُّلِ

Whoever cauterizes or requests for incantation has freed himself from the trust in Allah.

This is so because the order for the request for an incantation has been reported in Sahihayn from the hadith of 'A'ishah ﷺ. She said: The Prophet ﷺ used to command me to request that the incantation be done for me for the prevention of the evil eyes attack.

Ahmad, An-Nasai, and At-Tirmidhi reported from the hadith of Asmaa bint Umays, and authenticated by At-Tirmidhi, she said, O Messenger of Allah, the children of Jafar used to be attacked by evil eyes, do I seek incantation to be read on them? The Prophet ﷺ replied:

نَعَمْ ، فَلَوْ كَانَ شَيْءٌ سَابَقَ الْقَدَرَ لَسَبَقَتْهُ الْعَيْنُ

Yes! If anything would overcome the predestination, it could have been the evil eyes attack.

Muslim and some others also reported the like of the hadith from the hadith of Ibn Abbas ﷺ.

There are other Ahadith under this section as well. Some of the Ahadith contain the order of washing for the cure of the evil eyes attack. That is the washing of the face, the hands, elbows, knees, legs and the inner side of the loincloth of the one who has attacked someone with his eye, into a bucket, and be poured on the one who has been attacked, from his head to his back, from the rear.

Ahmad, Malik, and An-Nasai reported this description, and Ibn Hiban authenticated it.

19 كتاب الوَكالة
Book of Agency

It is permissible for an owner to give authority to someone else to act of his behalf in respect of every dealings in as much as there is nothing that could legally prevent such. If an agent sells beyond the amount specified by the owner, the excess money goes to the owner, and if he acts contrary to the owner's specifications for a better achievement or the likes, and the owner is pleased with it, then the transaction becomes valid.

Explanation:

I say: As for the assertion that agency is permissible in every dealings, that is because it is established from him ﷺ that he authorized someone to pay up a debt on his behalf, as mentioned in the hadith of Abu Raafi that he ﷺ commanded him to pay up a man's animal. The hadith was mentioned earlier in this work.

It is also established that he ﷺ commanded that the punishment for some crimes be meted on some individuals, as mentioned in this hadith:

وَاغْدُ يَا أُنَيسُ إِلَى امْرَأَةِ هَذَا فَإِنِ اعْتَرَفَتْ فَارْجُمْهَا

O Unays! Go very early tomorrow morning to this man's wife (the man whose case was brought), and throw her to death if she admits (the crime of the adultery levelled against her).

The hadith is in Sahih, and we shall discuss it in detail.

It is also established that he ﷺ authorized someone to take care of his sacrificial animal, and the sharing of its meat and skin. This hadith is also reported in Sahih.

It is as well established that he ﷺ authorized someone to take care of the

alms gathered for Ramadan, as mentioned in the hadith of Abu Hurairah ﷺ in Al-Bukhari.

It is established as well that he ﷺ gave Uqbah bin Aamir ﷺ some sheep to share among his companions. This hadith was mentioned earlier in the book of sacrifice.

It is established that he authorized Abu Raafi ﷺ and a man from Al-Ansari to mediate in the matter of his marriage with Maymuunah ﷺ. This hadith has also been mentioned as well.

It is also established that he said to Jabir ﷺ, If you come to my agent, take fifteen load measures from him. Abu Dawud and Al-Daraqutni reported this.

There are many Ahadith under this section, and which all indicate the permissibility of authorizing someone to act on one's behalf. There is no exception for this ruling except there is any legal prevention. Among these exceptional cases is for someone to give authority to another person to carry out for him what is not permissible for him to partake in originally, like a Muslim who makes a non-Muslim an agent for selling alcohol, or pig's meat, or the likes. This is because this kind of trade is not permissible. So also, it is not permissible to earn from it.

This is because of what is established from him ﷺ. It is reported that he said: If Allah forbids eating something, he would forbid earning from it as well. It has been mentioned earlier as well.

It has also been mentioned in the Gracious Book what indicates the permissibility of agency or authorizing others to do something on one's behalf, like the word of Allah, The Most High:

فَابْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هَذِهِ

So send one of you with this silver coin of yours... [Al-Kahf:19]

And His word:

اجْعَلْنِي عَلَى خَزَائِنِ الْأَرْضِ

Set me over the store-houses of the land...[Yusuf: 55]

In order to establish this matter, Al-Bukhari mentioned twenty-six Ahadith in the Book of Agency; six of which are suspended while others are link-able to the Prophet ﷺ.

As for the assertion that if an agent sells beyond the specified price given by the owner that the excess money goes to the owner, that is because of what is established in the Bukhari in the hadith of Urwah Al-Bariqee رضي الله عنه that the Prophet ﷺ gave him a dinar to buy a ram for him. He then bought two rams with the dinar; he sold one of them for a dinar and brought a ram and one dinar to the Messenger of Allah. The Prophet ﷺ then prayed for him for blessing in his trade. He later became blessed in trading, such that if he traded in soil particles, he would make profits.

At-Tirmidhi also reported from the hadith of Hakim bin Hizaam رضي الله عنه that the Prophet ﷺ sent him to purchase a sacrificial animal for him for one dinar. He mentioned the like of the hadith of Urwah Al-Bariqee, but the chain of transmission has a disconnection. It is from the narration of Habib bin Abi Thabit from Hakim, and he did not hear narrations from him.

Abu Dawud also reported the like the hadith from Abu Husayn, from a Shaykh of the people of Al-Madinah, on the authority of Hakim. However, the state of that Shaykh of the people of Al-Madinah is unknown.

Nevertheless, the majority of scholars shared the opinion we established under this section.

Al-Shafi'i in his new opinion, the scholars of his School of Thought, and An-Nasir hold that such contract is void. That is, the transaction of the agent similar to the example given, because the owner did not permit him to engage in such transaction.

As for the assertion that if the agent acts contrary to the owner's specifications for a better achievement or the likes and the owner is pleased with it, then the transaction becomes valid, that is because with his contentment he has given his trust and permission for him to act. However, if he is not pleased, it is then not compulsory on him to bear any loss incurred by the agent from acting contrary to his specification because there is not any trust or permission he can hold on.

It is established in the Bukhari and some other collections from the hadith of Man bin Yazid رضي الله عنه, he said: My father went out with some dinars with the intention of giving alms with them. He then kept them with a man in the masjid to give them out on his behalf. I then got there, took the money and

brought them home. My father then said, By Allah, I did not intend you with my alms! I dragged him to the Messenger of Allah ﷺ, who then said:

لَكَ مَا نَوَيْتَ يَا يَزِيدُ ولَكَ مَا أَخَذْتَ يَا مَعْنُ

O Yazid! You would have the reward of what you intended, and yours is what you took, O Man.

The alms is not likely to be a compulsory one, because it is the consensus of the Muslims that the compulsory alms is not permissible to be given to one's son.

20 كتاب الضّمَانة
Book of Guarantee

It is compulsory on someone who vouched for a living or a dead person in respect of a property or some money to pay up the fine at the time of request. The right of the payment returns to the debtor if he agrees to such. It is compulsory for whoever vouched to present a person, to present him, otherwise, he is held responsible.

Explanation:

I say: As for assertion that the guarantor will be held responsible, that is because of the hadith that is reported by Ahmad, Abu Dawud, and At-Tirmidhi from the hadith of Abu Umaamah ﷺ that the Prophet ﷺ said:

الزَّعِيمُ غَارِمٌ

A guarantor is liable

The chain of transmission of this hadith contains Ismail bin Ayaash, who is weak. However, his narrations from the people of ash-Sham are reliable, and this hadith is one of those he reported from someone from Ash-Sham, Sharahbil bin Muslim. Therefore, Ibn Hazm is not right for ruling that this hadith of Ismail bin Ayaash is weak.

In addition, An-Nasai reported this hadith with two chains, one of which is from the path of Abu Aamir Al-Wasaabi while the other is from the path of Hatim bin Hurayth, and the two are from the report of Abu Umaamah. Ibn Hiban authenticated the hadith from the path of Hatim. So also, Ad-Darimi said Hatim is a reliable narrator.

Ibn Majah and At-Tabarani also reported the hadith from the path of Saeed bin Abi Saeed on the authority of Anas ﷺ. Ibn Adyy reported it as well from the hadith of Ibn Abbas ﷺ, but he ruled that it is weak because of the presence of Ismail bin Ziyaad As-Sukuuni. Abu Musa Al-Madeeni also reported it in

the book As-Sahabah from the path of Suwayd bin Jabalah, and Al-Daraqutni mentioned that it is not established that he was a companion, so his hadith is Mursal — a hadith linked to the Prophet ﷺ by a Tabieen, without mentioning whom the hadith was reported from among the companion. However, some of the scholars opined that it is established that he was a companion.

Al-Khatib also reported the hadith in Al-Talkhis from the path of Ibn Lahihah on the authority of Abdullah bin Hayaan Al-Laythi from another person among the companion.

Al-Bukhari and some others also reported from the hadith of Salamah bin Al-Akwaa ﷺ that the Prophet ﷺ once refused to pray over someone who died and was indebted, Abu Qatadah then said: O Messenger of Allah, pray on him, I shall take care of the debt. The Prophet ﷺ then prayed on him.

At-Tirmidhi reported this story from the hadith of Abu Qatadah ﷺ and he authenticated it. Ahmad, Abu Dawud, An-Nasai, Ibn Hiban, Al-Daraqutni, and Al-Hakim also reported it from the hadith of Jabir ﷺ. And in a narration from the hadith of Jabir ﷺ it was mentioned that the Prophet ﷺ said to Abu Qatadah: Allah has accomplished the right of the creditor. , and he replied: Yes. The Prophet ﷺ then prayed on him. When he later paid up the money, the Prophet ﷺ said to him: Now his flesh is been made cooled on him.

Ahmad, Abu Dawud, An-Nasai, and Al-Daraqutni reported it, and Ibn Hiban and Al-Hakim authenticated it.

As for the fact that the right of the payment returns to the debtor if he agrees to that, is because he owed the debt and the situation of the transfer of the debt was the same as the situation when he borrowed the money in the first instance.

21 كتاب الصُّلْح
Book of Reconciliation

Reconciliation is permissible among the Muslims, except one that makes a forbidden thing lawful and vice versa. Reconciliation is permissible about a clear issue as well as a confused one but with what is clear to one thereof. It is also permissible to reconcile a known matter with the unknown, and it is not a condition that the parties involved are unhappy about the judgment. So also, it is permissible in matters of loss of lives, such that an intercession could be made to pay a fine lesser than the recommended blood money, as it is permissible in matters of properties.

Explanation:

I say: As for permissibility of reconciliation, that is because of the word of Allah, the High:

لَا خَيْرَ فِي كَثِيرٍ مِنْ نَجْوَاهُمْ إِلَّا مَنْ أَمَرَ بِصَدَقَةٍ أَوْ مَعْرُوفٍ أَوْ إِصْلَاحٍ بَيْنَ النَّاسِ

There is no good in most of their secret talks save in him who orders charity in Allah's cause, or righteous deeds, or reconciliation between mankind... [An-Nas: 114]

As for the exception of a reconciliation that can make a forbidden thing lawful and vice versa, that is because of the hadith of Amrr bin Awf, reported by Abu Dawud, Ibn Majah, At-Tirmidhi, Al-Hakim, and Ibn Hiban **that the Prophet ﷺ said:**

الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إِلَّا صُلْحًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا

Reconciliation is permissible among the Muslims, except a reconciliation that makes a lawful thing forbidden, or makes a forbidden thing lawful.

However, the chain of transmission of the hadith contains Kathir bin Abdillah bin Amr bin Awf, who reported on the authority of his father, and is very weak. Therefore, At-Tirmidhi is not right for authenticating the hadith.

Nevertheless, Ibn Hajar has given him excuse for that. He said, perhaps he — At-Tirmidhi — authenticated it owning to the large number of the chains of transmission of the hadith. That is because Abu Dawud reported the hadith with another chain, that is, the path of Kathir bin Zaid, on the authority of Al-Walid bin Rabaah, and from the hadith of Abu Hurairah ﷺ.

Al-Hakim said regarding it, it is on the requirement of Al-Bukhari and Muslim. Ibn Hiban also authenticated it, so also, At-Tirmidhi ruled that it is a sound hadith.

Al-Hakim also reported it from the hadith of Anas ﷺ, and from the hadith of 'A'ishah ﷺ as well. Al-Daraqutni also reported it.

As for the permissibility of making reconciliation about the clear and confused issues with what is clear to one thereof, that is because of the hadith of Ummu Salamah ﷺ, reported by Ahmad, Abu Dawud, and Ibn Majah. She said, Two men came to the Messenger of Allah about the matter of inheritance between them upon which they have so much deliberated, but they both had no evidence in respect of their opinions. The Prophet ﷺ then said:

إِنَّكُمْ تَخْتَصِمُونَ إِلَيَّ وإِنَّمَا أَنَا بَشَرٌ وَلَعَلَّ بَعْضَكُمْ أَلْحَنُ بِحُجَّتِهِ مِن بِعْضٍ ، وإِنَّمَا أَقْضِي بَيْنَكُمْ عَلَى نَحْوِ مَا أَسْمَعُ ، فَمَنْ قَضَيْتُ لَهُ مِنْ حَقِّ أَخِيهِ شَيْئًا فَلا يَأْخُذْهُ ، فإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ يَأْتِي بِهِ إِسْطَامًا فِي عُنُقِهِ يَومَ القِيَامَةِ

Verily, you come to me quarrelling with another, and I am only human being; perhaps a party of you may be melodramatic in the way of the presentation of his proofs, and I judge between you in accordance with what I hear. Therefore, whomever I gave anything to from the right of his brother should not take it, it is a portion of hell I gave him, and he will come with it as a poker on his neck on the Day of Resurrection.

On hearing that, the two men cried, and each of them said, I leave my right for my brother. The Prophet ﷺ then said:

أَمَّا إِذَا قُلْتُمَا فَاذْهَبَا فَاقْتَسِمَا ثُمَّ تَوَخَّيَا الْحَقَّ ثُمَّ اسْتَهِمَا ثُمَّ لِيَحْلِلْ كُلُّ وَاحِدٍ مِنْكُمَا صَاحِبَهُ

If you decided that, then go and share it among each other; each of you having the right of his brother in mind, showing him his affection, and relieving him of any undue burden.

The chain of transmission of this hadith contains Usamah bin Zaid bin Aslam Al-Madani, there are some ill comments about him. Nevertheless, the source of the hadith is reported in Sahihayn, and the people of knowledge have made evidence with it for the permissibility of making reconciliation about the issues one is not much cleared about, while the person exonerates himself from what is confusing thereof.

Al-Bukhari reported from the hadith Jabir ﷺ that his father was killed as a martyr at the battle of Uhud while he had some debts on him. The creditors then became aggravated of their rights. He added, I then went to inform the Prophet ﷺ about their actions. He ﷺ then appealed to them to admit the produce I had in my farm and relieved my father of the debt's burden, but they rejected. He ﷺ then withdrew my farm from them and said to me: I shall come to you very early tomorrow morning. The Prophet ﷺ then came to us the following morning, he walked round the dates-farm and supplicated for the blessings of Allah on its produce. I thereafter harvested the dates and paid the debts, and we still had some produce left for us after the payment.

This hadith contains the permissibility of making reconciliation about a known thing with an unknown.

As for the permissibility of making reconciliation in matters of loss of lives as it is in the case of the property, that is because money is involved in matters of loss of lives if the retaliation is not made in terms of life. Therefore, the intercession in this case becomes an intercession in respect of money, which comes under the word of Allah:

لَا خَيْرَ فِي كَثِيرٍ مِنْ نَجْوَاهُمْ إِلَّا مَنْ أَمَرَ بِصَدَقَةٍ أَوْ مَعْرُوفٍ أَوْ إِصْلَاحٍ بَيْنَ النَّاسِ

There is no good in most of their secret talks save in him who orders charity in

Allah's cause, or righteous deeds, or reconciliation between mankind... [An-Nisa: 114]

So also, it comes under the sayings of the Prophet ﷺ:

Reconciliation is permissible

Ahmad, Ibn Majah, and At-Tirmidhi reported another hadith from the hadith of Amrr bin Shu'ayb, on the authority of his father, from his grandfather, and At-Tirmidhi ruled that it is a sound hadith, that the Prophet ﷺ said:

مَنْ قَتَلَ مُتَعَمِّدًا دُفِعَ إِلَى أَوْلِيَاءِ المَقْتُولِ فَإِنْ شَاءُوا قَتَلُوا وإِنْ شَاءُوا أَخَذُوا الدِّيَةَ وَهِيَ ثَلاثُونَ حِقَّةً وثَلاثُونَ جَذَعَةً وأَرْبَعُونَ خَلِفَةً وذَلِكَ عَقْلُ العَمْدِ ومَا صَالَحُوا عَلَيهِ فَهُوَ لَهُم وذلِكَ تَشْدِيدُ العَقْلِ

Whosoever kills deliberately is handed over to the family of the killed, if they wish, they kill him back, and they wish they take blood money; it is a fine of thirty camels of two years plus of age, thirty camels of four years plus of age, and forty pregnant ones. However, if they reconcile, whatever they reconcile upon holds; stringently enforced for the severity of the crime.

The chain of transmission of the hadith contains Ali bin Zaid bin Judaan, and there are some ill comments about him.

As for the permissibility of making reconciliation even when the parties involved are unhappy about the judgment, that is because of the generality of the evidence regarding making reconciliation, and because of the possibility of the hatred coming up with the reconciliation. Therefore, the people who made the pleasure of the parties involved in the reconciliation a condition for making reconciliation between them have not come with any tenable proofs.

The majority of scholars have the opinion that this is permissible. However, it is reported in Al-Bahr from Al-Itrah, Al-Shafi'i, and Abu Laylah that reconciliation among people is not permissible except they are all pleased.

It is established in Sahihayn from the hadith of Kab ﷺ about two quarrelling people in the masjid, that the Prophet ﷺ made a sign to the creditor to leave half of the money, and to the debtor to hasten in the payment of the remaining.

That is an evidence for the permissibility of making reconciliation with someone whom one is having quarrel with, so also it is evident in it that one can leave some of one's right and take some in the process of reconciliation.

22 كتاب الحَوالة
Book of Transfer of Debt

Whoever is referred to a capable person should seek his right from the person unto whom he has been referred. However, if the person unto whom he has been referred trivializes the issue or fails to discharge the right, he has the opportunity to ask for his right back from the transferor.

Explanation:

I say: As for the assertion that whoever is referred to a capable person should accept that, that is because of the hadith of Abu Hurairah ﷺ in Sahihayn and some other collections that the Prophet ﷺ said:

مَطْلُ الْغَنِيِّ ظُلْمٌ، وَإِذَا أُتْبِعَ أَحَدُكُمْ عَلَى مَلِيءٍ فَلْيَتْبَعْ

That the rich trivializes the right of whom he owes is an act of oppression and injustice, and whoever is referred to a capable one should accept the reference.

Ibn Majah, Ahmad, and At-Tirmidhi reported the like of that from the hadith of Ibn Umar ﷺ, but the chain of transmission of the hadith of Ibn Majah contains Ismail bin At-Tawbah, who is only an acceptable narrator, not that reliable. Nevertheless, the remaining men of the chain of transmission are men of the books of authentic narrations.

In addition, it has been said that there is no disagreement among the scholars about the fact that the condition of the pleasure of the transferrer is considered in the right of transfer of debt. However, some of them argued that the pleasure of the rights owner should be the condition, while some others said the pleasure of whom the reference is made should be the condition.

As for the assertion that if the person unto whom one is referred trivializes the issue or fails to discharge the right; that one has the opportunity to seek back

his right from the transferrer, that is because the transferrer still bears the debt until he collects the owner's right for him from whom he referred him to. In addition, if he fails to collect it for him, the debt then becomes the way it was before the transfer.

This conclusion could be inferred from the word of the Prophet ﷺ, If one is referred unto a capable person, because the one who trivializes the issue or fails to discharge the expected right could not be said to be capable. In turn, such person is not whom the Prophet ﷺ ordered the right owner to accept been referred unto.

23 كتاب المفلِس
Book of Bankruptcy

It is permissible for the creditors to take everything they find with a bankrupt except the necessary things he cannot do without, like his abode, the clothes with which he covers his nakedness, the warm clothings, the food items with which he sustains himself and his family. Whoever finds his good intact with a bankrupt is more entitled to it than any other person among the creditors, and they become rivals in sharing his property if it cannot suffice for the payment of the debts. If one has run into bankruptcy and has the intention of paying his creditors, it is then not permissible that he is imprisoned. In addition, the twisting or cunning behaviour of a debtor who is capable of paying is an act of oppression, and that allows him to be dishonoured and gives way to his punishment as well. It is permissible that the judge denies a bankrupt access to his properties, as he has the authority to dispose them in order to settle the debts. He also has the authority to prohibit a squanderer from dealing with his property, as he can for whoever is not proficient in handling his properties. It is not permissible to release orphan's property to him except he has come of age, and it is permissible that his guardian eats from his property but kindly.

Explanation:

I say: As for the assertion that it is permissible that the creditors take everything they find with a bankrupt, that is because of the hadith of Abu Sa'id ﷺ with Muslim and some other collectors. He said, a man was indebted at the time of the Prophet ﷺ in respect of some produce he bought, and his debts became huge. The Prophet ﷺ said to his companions: Give him alms, but that wasn't enough to settle his debt. The Prophet ﷺ then said to the creditors: Take whatever you can find, and you do not have other than that.

Al-Daraqutni, Al-Bayhaqi, and Al-Hakim reported from the hadith of Kab bin Malik ﷺ, which Al-Hakim authenticated, that the Prophet ﷺ denied Muadh access to his property, and disposed it to settle his debts.

Said bin Mansuur, Abu Dawud, and Abdur-Razaq reported a hadith from Abdur-Rahman bin Kab bin Malik with a Mursal chain of transmission. He said: Muadh bin Jabal was a generous young man and he did not use to hide his things from people. He kept borrowing until he lost all his money through

debt. He then came to the Prophet ﷺ requesting him to appeal on his behalf to his creditors. If the people were to leave anything of their rights for anyone, they would have left it for Muadh because of the Prophet's ﷺ intercession, but they did not. The Prophet ﷺ then sold his (Muadh's) properties to them and he was left with nothing thereafter.

Abdur-Razaq mentioned that the chain of transmission of the hadith is authentic, though Mursal Ibn Al-Talaaa also mentioned in Al-Ahkaam that the hadith is sound.

All that has been said invariably indicates that it is permissible that the creditors take away everything they find with a bankrupt. However, it is not established that Muadh's creditors took the clothes that was on him, or that he was sent packing from his house, or that they took the basic needs of life from him and his family. This is the reason why we exempted those things.

As for the assertion that whoever finds his goods intact with a bankrupt is more entitled to it than any other person among the creditors, that is because of the hadith of Al-Hasan, which he reported from Samrah that the Prophet ﷺ said:

مَنْ وَجَدَ مَتَاعَه عِنْدَ مُفْلِسٍ بِعَيْنِهِ فَهُوَ أَحَقُّ بِهِ

Whoever finds his goods intact with a bankrupt is more entitled to it.

Ahmad and Abu Dawud, and Ibn Hajar mentioned in Al-Fath that its chain of transmission is good, but the controversy about the hearing of Al-Hasan from Samurah ﷺ is known.

Nevertheless, it is established in Sahihayn from the hadith of Abu Hurairah ﷺ that the Prophet ﷺ said:

مَنْ أَدْرَكَ مَالَه بِعَيْنِهِ عِنْدَ رَجُلٍ قَدْ أَفْلَسَ أَوْ إِنْسَانٍ قَدْ أَفْلَسَ فَهُوَ أَحَقُّ بِهِ مِن غَيرِهِ

Whoever finds his property intact with a man or someone who has run into bankruptcy is more entitled to it.

In a narration of Muslim, it is reported that the Prophet ﷺ said in respect of a man who ran into bankruptcy and some goods were found intact with him: They are for their owners that sold them for him.

In another report of Ahmad, it was related that the Prophet ﷺ said:

أَيُّمَا رَجُلٍ أَفْلَسَ فَوَجَدَ رَجُلٌ عِنْدَهُ مَالَهُ وَلَمْ يَكُنْ اقْتَضَى مِنْ مَالِهِ شَيْئًا فَهُوَ لَه

If anyone ran into bankruptcy and someone found the goods he sold to him intact with him while he has collected anything from the agreed price, the good is for him.

Al-Shafi'i, Abu Dawud, Ibn Majah, and Al-Hakim reported this hadith of Abu Hurairah ﷺ while Al-Hakim authenticated it. He ﷺ said in respect of a bankrupt that was brought to him: I shall judge among you with the Prophet's ﷺ judgment. The Prophet ﷺ said concerning that:

Whoever runs into bankruptcy or dies and someone finds his goods intact with him, he is more entitled to it.

Malik reported in Al-Muwattah so also Abu Dawud from the hadith of Abu Bakr bin Abdur-Rahman bin al-Harith bin Hisham with a Mursal chain that the Prophet ﷺ said:

If anyone sells goods to someone and the buyer runs into bankruptcy while he has not collected anything from the price, he is more entitled to his goods if he finds it intact with the buyer, but if the buyer dies, the seller then becomes a rival with the creditors.

Abu Dawud reported it linked to the Prophet ﷺ from the hadith of Abu Hurairah ﷺ, but there is a weak narrator, Ismail bin Ayaash, in its chain of transmission. However, Ismail here has reported from Harith Az-Zubayyidi from ash-Sham, and his narrations from the people of Ash-Sham are sound.

The majority of scholars are of the opinion that if a seller finds his exact goods with a bankrupt he is more entitled to it, but the Anafiyah School of Thought holds that he is not most entitled to it. However, the hadith we cited above proves this opinion wrong. The majority of scholars also hold that if the buyer who runs into bankruptcy has paid some amount from the agreed price that the seller no longer has any priority over the remaining creditors, he is rather a rival with them as the hadith mentioned shortly suggested. The condition was mentioned in the hadith: ... and he has not collected anything from the agreed

price. So also, Al-Shafi'i and Al-Hadawiyah are of the opinion that the seller has that priority.

So also, Al-Shafi'i has the opinion that if a buyer passes away and the goods he bought is available that the seller is more entitled to his goods if he finds it intact among the buyer's property, while Malik and Ahmad are of the opinion that he is a rival with the remaining creditors.

As for the assertion that if the total property of a bankrupt cannot suffice for the payment of the debts owed that the creditors then becomes rivals in sharing his property, that is because such judgment is the justice required among them. In addition, because it is compulsory that debts are paid among the creditors without any bias or partiality except there is an exception, and there is none in this case. What supports that opinion is present in the statement, Then the owner of the property becomes a rival with the creditors.

As for the assertion a bankrupt should not be jailed, that is because such judgment is against Allah's injunction.

Allah, in the Qur'an, says regarding that:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ

And if the debtor is in a hard time (has no money), then grant him time till it is easy for him to repay [Al-Baqarah: 280]

In addition, this fact is what could be deduced from the statement of the Prophet ﷺ The cunning attitude of a debtor who is capable of repaying is an injustice.

That is an authentic hadith, and it has been mentioned earlier. The hadith indicates that a debtor who has what to pay is an unjust person, while a bankrupt who does not have what to pay should not be punished or dishonoured.

However, if the state of a debtor is unknown, whether he has run into bankruptcy or he is capable of repaying. It is then compulsory that his state is examined as much as it could to confirm whether he is capable of paying or not, and can thereafter be handled well or jailed for him to pay. This fact is what the hadith, That a rich person trivializes the right of whom he owes is an act of oppression, which gives chance to dishonouring or punishing him establishes. Another narration has it that, The cunning attitude of a debtor who is capable of repaying is an injustice.

All these narrations are in Sahih.

Through examination also, it can be known that he has no means of paying, and he is then given respite until he is able to pay. Nevertheless, a bankrupt should not be jailed, that is not permissible. Such act against him is regarded as an absolute injustice.

As for the assertion that it is permissible that an authority denies a bankrupt access to his property, that is because the Prophet ﷺ denied Muadh access to his property as mentioned earlier. It is also permissible that a judge disposes the bankrupt's property to settle his debts as the Prophet ﷺ did with Muadh's property as well.

As for the permissibility of prohibiting a squanderer or a non-proficient trader from dealing with his property, that is because of the word of Allah, The Most High,

وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ

And give not your property unto to a fool... [An-Nisa: 5]

It is mentioned in Al-Kishaaf that a fool in this verse is a squanderer who spends his money in an unreasonable way because it is compulsory that money is spent well, or be reasonably engaged in a business. Moreover, the order in the verse is to the family of such a person, and the money in the verse is attributed to the family because money is from the things people live on and which they control considering the way the attributions in the verses are made:

وَلَا تَقْتُلُوا أَنْفُسَكُمْ

...and do not kill yourselves [An-Nisa: 29]

فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ

...then from those whom your right hands posses among your believing girls [An-Nisa: 25]

The evidence from the verse as to the fact that the order is to the guardian in respect of the property of the orphan is the word of Allah:

وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ

...but feed and clothe them therewith. [An-Nisa: 5]

Among the proofs that support this assertion is that the Prophet ﷺ did not frown at the action of the family of Hassan when they requested from him ﷺ to prevent Hassan from handling his wealth, that is if the narration concerning the story is authentic. Another issue is the rejection of the Prophet ﷺ of an egg given as alms by a poor person, as reported by Abu Dawud and authenticated by Ibn Khuzaymah from the hadith of Jabir ﷺ. Also, his rejection ﷺ the alms of someone who donated one of his two clothes, as reported by the people of As-Sunan and authenticated by At-Tirmidhi and Ibn Hiban from the hadith of Abu Sa'id ﷺ. And the fact the Prophet ﷺ rejected the act of a man who willed to free his slave after his death while he had no other wealth other than that, as indicated by Al-Bukhari in the heading of the section under which he recorded the hadith. The section reads, The section of the permissibility of rejecting the directives given by a fool or someone with low level of intelligence, if the authority does not prohibit him from handling his property.

Al-Shafi'i reported in his Musnad, so also Al-Bayhaqi from Urwah bin Az-Zubayr, he said: Abdullah bin Jafar ﷺ engaged in a trade and Ali ﷺ said, I shall report to Uthman that he might be prevented from such trade. Abdullah bin Jafar ﷺ then informed Az-Zubayr ﷺ about that. Az-Zubayr ﷺ said to him, I am your partner in that trade. When Ali ﷺ met Uthman ﷺ he said to him, Prevent him (Ibn Jafar) from that trade. Az-Zubayr ﷺ said to Uthman ﷺ, I am his partner in that trade, Uthman ﷺ then said, How do I prevent whom Az-Zubayr is his partner from trading?

It is obvious from the narration that this way of preventing an owner from handling his possession is known among the companions and it is well established in the religion, otherwise, some of the people who later came across this narration would have spoken against it. In addition, Uthman ﷺ would have told Ali ﷺ that such prevention is not permissible. In addition, had it been that the issue was not permissible Az-Zubayr and Abdullah bin Jafar would not have come into that agreement. The majority of scholars bear the opinion that preventing such person from handling his property is permissible.

As for the assertion that the property of an orphan should not be released to him except he has come of age, that is because of the word of Allah:

فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ

...if then you find sense of rationality in them, release their properties for them [An-Nisa: 6]

As for the fact that it is permissible that the guardian of an orphan eats from his property kindly, that is because of the word of Allah:

وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ

...and whoever is rich let him not eat from the wealth, but whoever is poor, let him consume from it kindly. [An-Nisa: 5]

It is established in Sahihayn that 'A'ishah ﴿رضي الله عنها﴾ said: This verse was revealed concerning the guarding of an orphan that if he is poor he can eat from the orphan's wealth reasonably.

Ahmad, Abu Dawud, An-Nasai, and Ibn Majah reported from the hadith of Amr ibn Shuaib, on the authority of father, from his grandfather, that a man came to the Prophet ﴿ﷺ﴾ and said: I am poor; I do not have any means of sustenance and I have an orphan under my care. The Prophet ﴿ﷺ﴾ replied him:

كُلْ مِنْ مَالِ يَتِيمِكَ غَيْرَ مُسْرِفٍ وَلاَ مُبَادِرٍ وَلاَ مُتَأَثِّلٍ

Eat from the wealth of your orphan, but not extravagantly, or hastily, or making wealth therewith.

The meaning of Mubaadir — eating the wealth hastily — is what is mentioned in the word of Allah:

وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا

...and do not consume it extravagantly, or hastily fearing that they grow up (to detect) [An-Nisa: 6]

That is, do not consume the wealth wastefully, or be in hurry in consuming it such that the orphan will not grow to detect that his wealth was eaten up.

This verse and the hadith therefore give exception to this other verse where Allah prohibited eating from the wealth of an orphan:

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَى ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا وَسَيَصْلَوْنَ سَعِيرًا

Verily, those who unjustly eat up the property of orphans, they only consume the fire into their bellies, and they will be burnt in a blazing fire.[52] *[An-Nisa: 10]*

52 Critically looking at this verse, it can be said that the hadith and the verse mentioned before do not give any exceptional ruling to it; rather they all have the same import. The verse only condemns those who eat up orphans' properties unjustly and not all who may eat from it, which is as well the import of the other verse and the hadith. Allah knows best.

24 كتاب اللُّقطة Book of Lost Properties

Whoever finds a lost item should keep it in its form; the container and the thread, and give it to its owner if he comes looking for it, but if does not come, he should announce it publicly for a year. It is permissible thereafter for him to turn it away from its original form or make use of it, but he will be responsible for it should the owner comes looking for it. The lost items of Makkah should be announced much more than those of other places. If you find a non-valuable item such as a staff, a whip or the like, it can be used without having to announce it for a year; but for only three days. Furthermore, lost animals are taken except camels.

Explanation:

As for the container and the thread that should be kept — the container refers to the leather-cover with which the bottle wherein the money is kept is covered, and the thread is that which is used to tie the leather up with the bottle —, that is because of the hadith of Iyaadh bin Himaar ﷺ. He reported that the Prophet ﷺ said:

مَنْ وَجَدَ لُقَطَةً فَلْيُشْهِدْ ذَوَيْ عَدْلٍ، وَلْيَحْفَظْ عِفَاصَهَا وَوِكَاءَهَا، فَإِنْ جَاءَ صَاحِبُهَا فَلاَ يَكْتُمْ فَهُوَ أَحَقُّ بِهَا وَإِنْ لَمْ يَجِئْ صَاحِبُهَا فَهُوَ مَالُ اللَّهِ يُؤْتِيهِ مَنْ يَشَاءُ

Whoever finds a lost item should call two trustworthy persons to witness it, he then keep its leather-cover and thread, and if its owner comes looking for it, he should not conceal it; he has the right to collect it back. However, if the owner does not come, it is then a wealth from Allah, which He bless whomever He wills it.

Ahmad, Abu Dawud, An-Nasai, Ibn Majah and Ibn Hiban collected the hadith.

In Sahihayn from the hadith of Zaid bin Khalid ﷺ, it is reported that the Prophet ﷺ was asked concerning lost gold or silver if found, he ﷺ replied:

اعْرِفْ وِكَاءَهَا وَعِفَاصَهَا ثُمَّ عَرِّفْهَا سَنَةً فَإِنْ لَمْ تَعْرِفْ فَاسْتَنْفِقْهَا وَلْتَكُنْ وَدِيعَةً عِنْدَكَ فَإِنْ جَاءَ طَالِبُهَا يَوْمًا مِنَ الدَّهْرِ فَأَدِّهَا إِلَيْهِ

Note the container and the thread, and then announce it publicly for a year. If you do not find its owner, you can then spend it, but it will not seize to be a trust on you such that if someone comes looking for it any time you will give it to him.

He was then asked concerning a lost camel, he replied:

مَا لَكَ وَلَهَا دَعْهَا فَإِنَّ مَعَهَا حِذَاءَهَا وَسِقَاءَهَا تَرِدُ الْمَاءَ وَتَأْكُلُ الشَّجَرَ حَتَّى يَجِدَهَا رَبُّهَا

What is your business with it? It can move, fetch water for itself, and feed by itself on leaves from trees, until its owner will come across it.

He was asked concerning a lost sheep, he replied thus:

خُذْهَا فَإِنَّمَا هِيَ لَكَ أَوْ لأَخِيكَ أَوْ لِلذِّئْبِ

Take it; it is either for you, your brother, or a wolf.

In a narration of Muslim, it is reported with the wordings:

فَإِنْ جَاءَ صَاحِبُهَا فَعَرَفَ عِفَاصَهَا وَعَدَدَهَا وَوِكَاءَهَا فَأَعْطِهَا إِيَّاهُ وَإِلاَّ فَهِيَ لَكَ

If the owner comes and he is able to attest to its container, the amount and thread, give it to him, if otherwise, it is yours.

Also in Muslim and some other collections from the hadith of Ubayy bin Kab ﴿ﷺ﴾ the Prophet ﴿ﷺ﴾ was reported to have said:

عَرِّفْهَا فَإِنْ جَاءَ أَحَدٌ يُخْبِرُكَ بِعِدَّتِهَا وَوِعَائِهَا وَوِكَائِهَا فَأَعْطِهَا إِيَّاهُ، وإِلَّا فَاسْتَمْتِعْ بِهَا

Announce it, if someone then comes attesting to its amount, container, and thread, give it to him, otherwise, make use of it.

All these narrations indicate that if the owner comes asking for his item it should be given back to him. But if no one comes asking for it, it should be announced for a complete year, and thereafter can be spent. However, if the owner comes asking for it later, the same amount or the kind of the property should be given to him if it has been used, but if it is still kept the way it was, it should be released back to him. That ruling is implied from the word of the Prophet ﴿ﷺ﴾: If someone comes asking for it any time, give it back to him.

The majority of scholars are of the opinion that it is not compulsory to announce the lost property any more after a complete year, but it is reported in the Bukhari from the hadith of Ubayy ﴿ﷺ﴾ what indicates the obligation of making further announcement after a complete year. He ﴿ﷺ﴾ reported thus, I found a container containing one hundred dinar, and I came with it to the Prophet ﴿ﷺ﴾. The Prophet ﴿ﷺ﴾ then said to me: Announce it for a year. I did that but I did not find the owner. I therefore went back to him ﴿ﷺ﴾ the second time. He said again, Announce it for a year. I did that for the second time but I did not find the owner as well. I then went back to him the third time, and he said: Note the container, the amount, and the thread with which it was tied, if the owner comes asking for it give it to him, otherwise, make use of it. I then spent the money but I later met the owner in Makkah.

There is a difference of opinion among the scholars of hadith concerning this report; some of them opined that the further announcement after a year in the hadith is a mistake, as Ibn Hazm strongly believed. So also Ibn Al-Jawzee, he commented thus: What is apparent to me in this hadith is that Salamah — a narrator in the chain of transmission of the hadith — made mistake in the report, and the matter has come to stay for only a year thereafter.

Some of them tried to marry the reports, they said, The further announcement after a year should be understood as a call to more fear of Allah in handling the issue. There are some other comments concerning the hadith, but this avenue may not be appropriate to mention them.

In addition, the meaning of the statement of the Prophet ﴿ﷺ﴾ in the hadith: It

then becomes a trust on you is that it is compulsory for him to return the same quantity to the owner, if the owner comes any time. The trust in this sense is used to express obligation.

As for the assertion that the lost property of Makkah should be announced more than those of other places or that emphasis should be laid on it, that is because of what is reported in Sahih that the lost property of Makkah should be announced more and no other than that is permissible regarding it; it cannot be possessed. If all the lost properties are to be announced, whether those of Makkah or other places, the specific ruling concerning the announcement of a lost property of Makkah indicates nothing but an emphasis while announcing lost properties of Makkah.

Furthermore, a pilgrim, who may never visit Makkah again, may find something; he will therefore need to be more serious in making announcement. Some other reasons have been mentioned as well.

As for the assertion that it is permissible to make use of non-valuable lost property, like a staff or a whip, or the likes, without announcing it, that is because of what Ahmad and Abu Dawud reported from the hadith of Jabir ﷺ. He said, The Messenger of Allah ﷺ permitted us to make use of a staff, a whip, or a rope, and the likes that we might found as lost properties.

The chain of transmission of this hadith contains Al-Mugirah bin Ziyad; there are some ill comments about him, but Waqi Ibn Main and Ibn Adyy authorized him.

In Sahihayn from the hadith of Anas ﷺ, it is reported that the Prophet ﷺ saw a date on his way and said:

لَوْلَا أَنِّي أَخَافُ أَنْ تَكُونَ مِنَ الصَّدَقَةِ لَأَكَلْتُهَا

If not that I fear that it is from as-Sadaqah (alms) I would have eaten it[53]

Ahmad, At-Tabarani, and Al-Bayhaqi reported from the hadith of Yalaa bin Murrah linked to the Prophet ﷺ that he said: Whoever finds a non-valuable item, a rope, or dirham, or the like, should announce it for three days, but if its value is more than that, he should announce it for six days.

53 The Prophet ﷺ did not use to take alms, but he took gifts.

At-Tabarani added that he ﷺ said further: If the owner comes, give it to him, otherwise, give alms with it.

The chain of transmission of the hadith contains Umar bin Abdillah bin Yalaa, who is weak.

Abdur-Razaq also reported from the hadith of Said ﷺ that Ali ﷺ came to the Prophet ﷺ with a dinar he found in a market, the Prophet ﷺ then said to him: Announce it for three days Ali did that, but he did not find anyone to claim the money. The Prophet ﷺ later said to him: Spend it.

However, if it is an eatable thing, it is not compulsory to announce it; rather it is permissible for whoever finds it to eat it immediately because of what was mentioned earlier from the statement of the Prophet ﷺ concerning the date he found.

As for the assertion that the lost animals are taken except camels, that is because of the hadith that was mentioned shortly from the report of Zaid bin Khalid ﷺ. Moreover, the extension of the ruling regarding the lost sheep to other animals is because they are alike, going by the import of the statement of the Prophet ﷺ: It is either for you, your brother, or a wolf. This statement is a general one that includes all lost animals except camels, as it is apparent.

In addition, Muslim reported a hadith from the narrations of Zaid bin Khalid ﷺ that supports this assertion, the Prophet ﷺ said:

مَنْ آوَى ضَالَّةً فَهُوَ ضَالٌّ مَا لَمْ يُعَرِّفْهَا

Whoever incorporates a lost animal into his flock without any previous announcement is devious.

The animal in this narration refers to any type of animal that could be found, be it sheep or other animals, moreover, the hadith only refers to the one who takes the animal without announcement, which therefore indicates the permissibility of taking it. However, the camel is not inclusive owning to the order from another hadith.

25 كتاب القَضَاء
Book of Adjudication

Making judgment among people is only allowed for someone who is religiously qualified and capable of making judgment, whose piety can prevent from eating people's property, and who can exercise fairness and justice when making judgment and as well be impartial in his rulings. It is forbidden that one requests for the position of a judge or shows his willing for it, and it is not permissible for the authority to appoint such a person as a judge. Furthermore, whoever is made a judge is under a delicate situation; he has double rewards for each of his right judgments but only one if he judges wrongly, and that is after he might have strived vehemently within his capacity to arrive at a right judgment. It is forbidden for him to collect bribes or any gift that might be offered to him in his capacity as a judge. It is not permissible for him to make judgment while angry, and it is compulsory on him to treat the two quarrelling people equally except when making judgment between a Muslim and an unbeliever, so also to listen to the both quarrelling parties before making judgment. He should not also prevent people from patronizing him; rather he should accommodate them as much as he can. It is permissible for him to take helpers as may be required by the situation. In addition, it is permissible for him to make judgment by intercession, mediation, or advice or counselling. The judgment of a judge only manifests as to what is apparent from the situation, therefore, whoever have a judgment in his favour should not take it except the judgment is according to that which is apparent from the situation.

Explanation:

As for the assertion that making judgment is only allowed for someone who is religiously qualified and capable of making judgment, that is because of what Allah commands in the Glorious Book concerning making judgment with justice, fairness, and equity. Moreover, no one can understand this required justice except who learns and understands the rulings of both the Qur'an and Sunnah. Consequently, it is only who is religiously qualified to judge who can have this quality. Apparently, whoever is a follower of an Imam of a particular School of Thought will only know the positions of his Imam on issues, without necessarily knowing the evidences supporting his positions. Such a person will not judge with Allah's rulings, as may it appear to him on different issues; rather he will judge with what appears to him from the positions of his Imam.

This assertion regarding the quality of a judge can be supported by the hadith of Buraydah (ﷺ), that the Prophet (ﷺ) said:

الْقُضَاةُ ثَلَاثَةٌ وَاحِدٌ فِي الْجَنَّةِ وَاثْنَانِ فِي النَّارِ فَأَمَّا الَّذِي فِي الْجَنَّةِ فَرَجُلٌ عَرَفَ الْحَقَّ فَقَضَى بِهِ وَرَجُلٌ عَرَفَ الْحَقَّ وَجَارَ فِي الْحُكْمِ فَهُوَ فِي النَّارِ وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلٍ فَهُوَ فِي النَّارِ

Judges are of three kinds; only one of them will go to paradise, the remaining two will be inmate of hell. He that will go to paradise is a judge who knows the truth and judges with it, while someone who knows the truth but deviates from it in judgment will go to hell, so also someone who judges between people without knowledge will reside in hell.

Ibn Majah, Abu Dawud, An-Nasai, At-Tirmidhi, and Al-Hakim reported it; and Al-Hakim authenticated it. In addition, Ibn Hajar has worked on the combination of its chains in a separate compilation.

The point that supports this discussion from the hadith is that no one will know the truth as far as any issue is concerned except a scholar, while a follower of a School of Thought will not but judge with the opinions of his Imam, and will not even know whether they are correct or not. This invariably is a judge who judges without knowledge and that is a quality of one of the two judges who will reside in hell.

One of the evidences that indicate the necessity of a judge being qualified before assuming the position of a judge is the word of Allah:

وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ

...and those who judges not with what Allah has revealed, such are the unbelievers. [Al-Maidah: 44]

In another verse:

...such are the wrong doers

In another one:

...such are the disobedient

And no one will judge with what Allah has revealed except those who understand the Qur'an and its interpretations.

Another evidence that supports the fact that a judge must be qualified is the hadith of Muadh when the Prophet ﷺ sent him to Yemen. The Prophet ﷺ asked him: With what will you judge among people? he replied: With the Book of Allah. He ﷺ asked again: What if you don't find the ruling in the Book of Allah? he replied: Then with the Sunnah of His messenger ﷺ He ﷺ asked also: What if you don't find it? he replied: Then with my opinion (formed from the Qur'an and Sunnah). This hadith is a popular hadith, and I have written about its various chains of transmission as well as those who recorded it in separate compilation.

Moreover, what is apparent is that a follower to a School of Thought understands neither the Book of Allah nor Sunnah, and he does not have any subjective opinion; he does not even know where some rulings are found, is it in the Qur'an or Sunnah?, let alone of making judgment with such rulings. And if he were to judge with his opinion when he assumes that the rulings are not found in both the Qur'an and Sunnah, he will definitely know that he is making fool of himself because he understands neither the Qur'an nor Sunnah. If he does judge, undoubtedly, he will acknowledge that he has ruled with other than the law of Allah.

As for the fact that the judge must be someone whose piety can prevent from eating people's property, who can exercise fairness and justice when making judgment and be impartial in his rulings, that is because whose fear of Allah cannot prevent from eating people's property will definitely take a bribe. Consequently, this act will be a barrier between him and the truth; it will always prevent him from judging with the truth, as it is going to be discussed extensively later. So also, someone who is not trustworthy, because of his unfairness, compromise, or favouritism, will also leave the truth even though he knows it. Such person is among the judges who will reside in hell, because he knows the truth but turns away from it.

As for the assertion that it is forbidden for him to seek or wish for the position of a judge, that is because of the hadith of Abdur-Rahman bin Samrah in Sahihayn and some other collections. He reported that the Prophet ﷺ said:

يَا عَبْدَ الرَّحْمَنِ بْنَ سَمُرَةَ ، لا تَسْأَلِ الإِمَارَةَ ، فَإِنْ أُعْطِيتَهَا عَنْ مَسْأَلَةٍ وُكِلْتَ إِلَيْهَا ، وَإِنْ أُعْطِيتَهَا عَنْ غَيْرِ مَسْأَلَةٍ أُعِنْتَ عَلَيْهَا

O Abdur-Rahman bin Samrah, do not seek for leadership, because if you are given as a result for you seeking for it, you will be left to it, but if you are given without asking for it, you will be assisted.

Ahmad, Abu Dawud, Ibn Majah, and At-Tirmidhi recorded another hadith from the hadith of Anas ﷺ, and At-Tirmidhi rated it to be a sound hadith. He ﷺ reported that the Prophet ﷺ said: Whoever seeks for the position of a judge will be left to it, and whoever is compelled to take it will be sent an angel to always put him right.

Al-Bukhari and some other collectors also recorded from the hadith of Abu Hurairah ﷺ that the Prophet ﷺ said:

إِنَّكُمْ سَتَحْرِصُونَ عَلَى الْإِمَارَةِ، وَسَتَكُونُ نَدَامَةً يَوْمَ القِيَامَةِ، فَنِعْمَ المُرْضِعَةُ، وَبِئْسَتِ الفَاطِمَةُ

At a time, you shall have aspirations for leadership, and it will be a cause for regret on the Day of Resurrection; blessed is the breast feeding period and what a bad period is the weaning period[54]

Moreover, the import of these narrations does not contradict the hadith that is collected by Abu Dawud with a sound chain, from the hadith of Abu Hurairah ﷺ. He reported that the Prophet ﷺ said: Whoever seeks for the position of a judge over the Muslims till he is given, and his is just, he will have the paradise in recompense, but if he is unjust, he will be put in the hell. That is because he is considered sinful for seeking for the position ordinarily, and the reward of the paradise he has is because of his justice.

As for the fact that it is not permissible for the authority to appoint someone who seeks or wishes for the position a judge, that is because of the hadith of Abu Musa ﷺ in Sahihayn. He said, I and two men from my clan entered unto the Prophet ﷺ. One of them said, O messenger of Allah, appoint me a leader of one of the places Allah puts under your control. The other person said the same. The Prophet ﷺ then replied:

54 The breast-feeding period in the hadith is used to describe the beginning of such a government, because it usually involves consuming wealth, exercising power, and various enjoyments, the real and the unreal. However, an undeserved weaning is used to describe the end of such government because it usually involves killing and withdrawal of power, as it is with a baby if weaned before the expected time, so also because the accountability on the Day of Resurrection concerning it shall be tense.

إِنَّا وَاللَّهِ لاَ نُوَلِّي عَلَى هَذَا الْعَمَلِ أَحَدًا سَأَلَهُ وَلاَ أَحَدًا حَرِصَ عَلَيْهِ

By Allah, we will not appoint over the issue anyone who requests or seeks for it.

As for the fact that whoever is appointed a judge is under a delicate situation, that is because of the hadith of Abu Hurairah ﷺ with Ahmad, Ibn Majah, At-Tirmidhi, Al-Hakim, Al-Bayhaqi, Al-Daraqutni, rated sound by At-Tirmidhi, and authenticated by Ibn Khuzaymah and Ibn Hiban. It is reported the Prophet ﷺ as said:

مَنْ جُعِلَ قَاضِيًا بَيْنَ النَّاسِ فَقَدْ ذُبِحَ بِغَيْرِ سِكِّينٍ

Whoever is appointed a judge over people has been slaughtered without a knife

Ahmad, Ibn Majah, and Al-Bayhaqi also reported from the hadith of Ibn Mas'ud ﷺ that the Prophet ﷺ said: There is no judge judging among people except that he will be held back on the Day of Resurrection, and an angel holding him by his nape until he will bring down the hell. He will raise his head up to Allah, the Great and the Almighty; if He orders him to throw him, he will throw him into the space, and he will continue falling in the air for forty years.

The chain of transmission of the hadith contains Uthman bin Muhammad Al-Akhnasi, and there are some ill comments against him.

Ibn Majah and At-Tirmidhi collected from the hadith of Abdullah bin Abi Awfaa ﷺ, and Al-Hakim rated it sound in Al-Mustadraq, so also Al-Bayhaqi and Ibn Hiban. It is reported that the Prophet ﷺ said:

إِنَّ اللَّهَ مَعَ القَاضِي مَالَمْ يَجُرْ فَإِذَا جَارَ وَكَلَه إِلَى نَفْسِهِ

Verily, Allah is with a judge as long as he does not exercise injustice; if he does injustice, He will leave him to himself.

In the narration of At-Tirmidhi, he has it that, If he does injustice, He will abandon him and Satan will keep to him.

There are other narrations under the issue of requesting for the position of a judge, for and against; I have mentioned all of that in the book Sharhu Al-Muntaqah.

As for the assertion that if a judge judges correctly he has double rewards, but if wrongly, he has only one; on the condition that he strives well within his capacity to judge correctly, that is because of the hadith of Amrr bin Al-Aas ﷺ collected in Sahihayn and some other collections. He ﷺ reported that the Prophet ﷺ said:

إِذَا حَكَمَ الحَاكِمُ فَاجْتَهَدَ ثُمَّ أَصَابَ فَلَه أَجْرَانِ وَإِذَا حَكَمَ فَاجْتَهَدَ ثُمَّ أَخْطَأَ فَلَه أَجْرٌ

If a judge judges correctly, while he has strived well in the course, he has double rewards, and if he judges wrongly, after has strived in order to arrive at a correct judgment, he has a single reward.

It is mentioned in some other narrations that if he judges correctly he has ten rewards.

As for the assertion that it is forbidden for him to collect bribe or take gifts given to him in his capacity as a judge, that is because of the hadith of Abu Hurairah ﷺ that is collected by Ahmad and At-Tirmidhi, rated sound by At-Tirmidhi, and authenticated by Ibn Hiban. He ﷺ reported that the Prophet ﷺ said, May Allah curse the briber and the bribed, for judgment.

Ahmad, Abu Dawud, Ibn Majah, and At-Tirmidhi reported from the hadith of Abdullah ibn Amr ﷺ the kind of the hadith of Abu Hurairah, and At-Tirmidhi authenticated it, so also Ibn Hiban, At-Tabarani, and Al-Daraqutni.

In addition, Ahmad and Al-Hakim reported from the hadith of Thawban ﷺ that the Prophet ﷺ said: May Allah curse the briber, the bribed, and the person who settles between them. However, the chain of transmission of the hadith contains Layth bin Abi Sulaym. Al-Bazaar while commenting about the hadith, said: He (Layth bin Abi Sulaym) reported it alone. The chain of transmission of the hadith also contains Abu Al-Khataab, and it is said that he is narrator whose state is unknown.

There is another hadith on the authority of Abdur-Rahman bin Awf ﷺ with

Al-Hakim, so also form the report of 'A'ishah and Ummu Salamah ﴿ﷺ﴾ as At-Tirmidhi pointed out.

The people of Knowledge collectively agree that bribery is forbidden, and some of them have made evidence with the word of Allah:

أَكَّٰلُونَ لِلسُّحْتِ

...devouring all forbidden things. [Al-Ma'idah:42]

It is reported from Al-Hasan and Said bin Jubayr that they interpreted this verse this way. It is also reported from Ibn Mas'ud ﴿ﷺ﴾ on the authority of Masruuq that Ibn Mas'ud was asked concerning As-Suht— in the verse above —: is it bribery?

He replied: Whosoever rules not with what Allah has revealed, such are the unbelievers, ...such are the wrong doers, and ....such are the disobedient, but As-Suht is for someone to seek your assistance over a wrong done to him and then give you a gift. If you are given a gift in such situation, do not collect it.

We have mentioned related issues under the section of alms giving. The hadith, the gift given to the people in the authority is guluul — stealing from the war booty before its distribution — also supports the facts that the gifts given to a judge for the purpose of judgment is forbidden. The hadith is reported by Al-Bayhaqi and Ibn Adyy from the hadith of Abu Humayd. Ibn Hajar commented concerning it thus: its chain is weak. Perhaps it is weak because it is a report of Ismail bin Ayaash from the people of Al-Hijaaz.

At-Tabarani also reported it in Al-Awsat from the hadith of Abu Hurairah ﴿ﷺ﴾. Ibn Hajah commented that its chain of transmission is weaker than the first. Also, Sunayd bin Dawud reported it in his Tafseer from the hadith of Jabir ﴿ﷺ﴾, and its chain contains Ismail bin Muslim, who is also weak.

In addition, Al-Khatib reported it in Talqis Al-Mushaabah from the hadith of Anas ﴿ﷺ﴾ with the wordings: The gift offered to the people in the authority is As-Suht — bribery.

Abu Dawud reported concerning that, with another wording, from the hadith of Buraydah ﴿ﷺ﴾ from the Prophet ﴿ﷺ﴾

مَنِ اسْتَعْمَلْنَاهُ عَلَى عَمَلٍ فَرَزَقْنَاهُ رِزْقًا فَمَا أَخَذَه بَعْدَ ذَلِكَ فَهُوَ غُلُولٌ

Whoever with appointed for any assignment and we gave him some money, whatever he takes thereafter is guluul - stealing from the war booty before its distribution.

Al-Bukhari in his Sahih, in the chapters of adjudication, has a section titled The section of the alms given to the employees; therein he mentioned the common hadith of Ibn Lutbiyah. The import of the hadith is in line with this assertion; the gift given to a judge because of his position as a judge is considered a bribe, whether it makes effect immediately or later.

As for the fact it is not permissible for him to judge when he is angry, that is because of the hadith of Abu Bakrah ﷺ in Sahihayn and some other collections. He reported that he heard the Prophet ﷺ saying:

لَا يَقْضِيَنَّ حَاكِمٌ بَيْنَ اثْنَيْنِ وَهُوَ غَضْبَانُ

No judge should judge between two people while he is angry

This hadith however does not contradict the hadith of Abdullah bin Zubayr ﷺ, which he reported from his father, collected in Sahihayn and some other collections, that he and a man from among the Ansar had a dispute, and the Prophet ﷺ said: O Zubayr, irrigate your farm first, then allow water to pass on to your brother. The man from Ansar became angry and said, O Messenger of Allah is that because he is your cousin. The Prophet ﷺ got angry and said: O Zubayr, irrigate your farm and retain the water until it returns back to the wall. That is because the Prophet ﷺ is infallible whether is angry or delighted, contrary to other than him, and an anger cannot prevent him from saying the truth. Moreover, it is apparent from the prohibition in the hadith concerning not making judgment when one is angry that the prohibition is for forbiddance and placing of embargo, but the majority of scholars opine that the judgment made when one is angry is valid in as much as it is right.

As for the assertion that it is compulsory to treat the two quarrelling parties equally except if one of them is an unbeliever, that is because of the hadith of Ali ﷺ with Abu Ahmad, Al-Hakim, in Al-Kunaa. He once sat beside Shurayh (Ali's judge during his regime) during the hearing proceeding of a

dispute between him and a Jew, and said, If he were to be a Muslim I would have sat with him on the floor before you. But I heard the Prophet ﷺ saying: Do not treat them (unbelievers) equally in the sittings.

Abu Ahmad, Al-Hakim, after mentioning this hadith said, It is a contradicted hadith. Ibn Jawzi also mentioned it in Al-Ilal with the same chain, and as well commented that it is not an authentic report. However, Al-Bayhaqi reported it with another chain, on the authority of Jabir Al-Juifi, from Ash-Shaabi. He said, Ali ﷺ went to the market one day, and found a Christian man selling armor. He recognized the armour. The hadith goes on.

This chain is as well defective; it contains Amrr bin Shamir, who reported the hadith from Jabir Al-Jufi, and they are both weak.

Ahmad, Abu Dawud, Al-Bayhaqi, and Al-Hakim reported another hadith from the hadith of Abdullah bin Az-Zubayr ﷺ, and authenticated by Al-Hakim. He said, the Messenger of Allah ﷺ ordered that the two quarrelling parties should sit before the judge.

The chain of transmission as well contains Musab bin Thabit bin Abdillah bin Zubayr, who is weak.

As for the assertion that it is compulsory that the judge listens to both quarrelling parties before making judgment, that is because of the hadith of Ali ﷺ with Ahmad, Abu Dawud, and At-Tirmidhi; rated sound by At-Tirmidhi and authenticated by Ibn Hiban, that the Prophet ﷺ:

فَإِذَا جَلَسَ بَيْنَ يَدَيْكَ الْخَصْمَانِ فَلاَ تَقْضِيَنَّ حَتَّى تَسْمَعَ مِنَ الآخَرِ
كَمَا سَمِعْتَ مِنَ الأَوَّلِ فَإِنَّهُ أَحْرَى أَنْ يَتَبَيَّنَ لَكَ الْقَضَاءُ

When two quarrelling people sit before you, you should not judge until you hear from the second person as you heard from the first, it is then you can have proper understanding of the judgment.

This hadith has many chains that can be put together to make it sound and suitable for evidence.

As for the assertion that he should accommodate people as much as he can, that is because of the hadith of Amrr bin Murrah ﷺ, reported by Ahmad, At-Tirmidhi Al-Hakim, and Al-Bazaar. He mentioned that he heard the Prophet ﷺ saying:

مَا مِنْ إِمَامٍ يُغْلِقُ بَابَهُ دُونَ ذَوِي الحَاجَةِ وَالخَلَّةِ وَالمَسْكَنَةِ إِلَّا أَغْلَقَ اللَّهُ أَبْوَابَ السَّمَاءِ دُونَ خَلَّتِهِ وَحَاجَتِهِ وَمَسْكَنَتِهِ

There is no Imam who closes his door against the needs, wants, and desires of his subjects, except that Allah closes the doors of the heavens against his needs, wants, and desires.

Abu Dawud and At-Tirmidhi also reported the hadith on the authority of Abu Maryam Al-Azadi ﷺ from the Prophet ﷺ, with the wordings:

مَنْ وَلَّاهُ اللَّهُ عَزَّ وَجَلَّ شَيْئًا مِنْ أَمْرِ الْمُسْلِمِينَ فَاحْتَجَبَ دُونَ حَاجَتِهِمْ وَخَلَّتِهِمْ وَفَقْرِهِمُ احْتَجَبَ اللَّهُ عَنْهُ دُونَ حَاجَتِهِ وَخَلَّتِهِ وَفَقْرِهِ

Whosoever Allah, the Great and the Might, places in the position of authority over any circumstances of the Muslims and denies them their needs, wants, and necessities, Allah will deny him his needs, wants, and necessities.

Ibn Hajar mentioned in Al-Fath that the chain of transmission of this hadith is sound.

At-Tabarani also reported the hadith from the hadith of Ibn Abbas ﷺ with the wordings: Any leader of the Muslims who hides or covers himself from his people until he upsets them, Allah will cover Himself from him on the Day of Resurrection.

Ibn Abi Hatim mentioned that this hadith has contradictions.

However, it is said that he should accommodate people as much as he can because he also needs to serve himself, and his family has rights upon him as well. It is therefore not necessary for him to give all his time to them, because that may in another way cause distress to him and thereby be less productive. So also, he should not hide away from them all the time because that will be unfair to the quarrelling people.

It is established in Sahih from the hadith of Abu Musa ﷺ that he acted as a concierge for the Prophet ﷺ the day he sat at river bank. It is established in Sahih as well in the narration concerning the desertion of the Prophet ﷺ of his wives for a month that Umar ﷺ sought permission to enter into the

apartment where the Prophet ﷺ was in from his doorman. He said to him, O Ribaah! Seek permission for me to enter. It is also established in Sahih that Umar ﷺ had a gatekeeper whose name was Yarfa.

As for the fact that it is permissible for him to take assistants if he requires such, that is because of the hadith of Anas ﷺ established in Sahih that Qays bin Sad used to be with the Prophet ﷺ in the position of a police to the authority. That however may become compulsory if he cannot establish the truth or prevent oppressions in his judgment except with that.

As for the assertion that a judge can make judgment by making intercession and mediation between the quarrelling parties, or gives advice or counselling, that is because of the hadith of Kab bin Malik ﷺ in Sahihayn and some other collections. It is reported that he sought for the debt Ibn Abi Haddar owned him while they were in the masjid and their voice went aloud in the course of the dispute until it reached the Prophet ﷺ in his house. He ﷺ then came out to them raising the curtain of his door, and called out: O Kab. He replied, Yes! O messenger of Allah. The Prophet ﷺ then said: Reduce for him from the debt this amount. He made a sign with his hand for a half of it. Kab replied immediately, I have done that O messenger of Allah.: The Prophet ﷺ then said to the debtor: Pay the remaining immediately.

This hadith contains evidence for what we mentioned in this discussion — the permissibility of mediating or making intercession, or giving advice or counselling in judgment —. Moreover, this matter had been discussed earlier in the Book of Reconciliation, where various evidences that support the necessity of making reconciliation between Muslims were mentioned from both the Qur'an and Sunnah, and the judge as a conciliator is inclusive in the general evidences cited.

As for the assertion that the judgment only manifests as to what is apparent from the situation that may likely change if the cases change with the situation, that is because of the hadith of Ummu Salamah ﷺ in Sahihayn and some other collections that the Prophet ﷺ said:

إِنَّمَا أَنَا بَشَرٌ وَإِنَّكُمْ تَخْتَصِمُونَ إِلَيَّ وَلَعَلَّ بَعْضَكُمْ أَنْ يَكُونَ أَلْحَنَ بِحُجَّتِهِ مِنْ بَعْضٍ وَأَقْضِي لَه عَلَى نَحْوٍ مِمَّا أَسْمَعُ فَمَنْ قَضَيْتُ لَهُ مِنْ حَقِّ أَخِيْهِ شَيْئًا فَلا يَأْخُذْ فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ

I am only human, and you come to me for the reconciliation of your disputes; perhaps a party of you may be melodramatic in the presentation of his proofs

than the other, whom I will then judge in his favour for that I heard. So, whosoever I give anything of his brother's right to should not take it, I have only cut a portion of hell for him.

Al-Shafi'i mentioned that the majority of scholars agree to the fact the judgment of any judge cannot make a forbidden thing permissible.

Al-Nawawi says, The assertion that the judgment of a judge holds both apparently and otherwise contradicts the import of this hadith as well as the agreement of the scholars reported on the issue.

Generally, there is no point in what the Anafiyah opines, that the judgment of a judge holds both apparently and otherwise, and that it can permit a forbidden thing if a judge judges for it. They made evidence with baseless arguments, which any knowledgeable person will find worthless.

26 كتاب الخصُومَة
Book of Prosecution

It is upon the prosecutor or the claimer to produce proofs for his claims and the accused to swear for his innocence. The judge will judge with one's self-acknowledgement or confession, and he will judge in favour of the prosecutor with the witnesses of two trustworthy men, or the witnesses of a man and two women, or the witness of a man together with the swearing of the prosecutor. The judgment will be in favour of the accused with his swearing for not being guilty of the offence. However, the prosecutor may refute such judgment with the swearing of refusal. A judge can judge based on his previous knowledge in relation to the case. The witness of a non-trustworthy person is not acceptable, so also the witness of a betrayer and that of the people who have enmity between one another. In addition, the witness of a suspect, a worker to a household, a known false accuser, and a villager against a city person is not acceptable. However, the witness of someone who testified to a deed or statement he made can be accepted, so far it does not involve any suspicion. Perjury is a great sin. In the case of contradictory proofs such that none can be established against the other, the judgment goes half way to each of the parties. Furthermore, if the prosecutor does not have proofs for his claims, the accused will only have to swear for not being guilty even if he is a dissolute person, and no proofs will be tolerated afterward. Any sane, matured, serious or determined person who acknowledges being guilty of a mentally and morally feasible event must be held responsible for it. An acknowledgment made once is enough for judgment, and there is no difference between an offence that may warrant legal punishment or otherwise, as it will explained soon.

Explanation:

I say: As for the assertion that the prosecutor is to produce proofs for his claims, that is because of the statement of the Prophet ﷺ: Your witness or his swearing as reported in Sahihayn from the hadith of Al-Ashath bin Qays ﷺ. Muslim also reported from the hadith of Wail bin Hujr ﷺ that the Prophet ﷺ asked Al-Kindi: Do you have any proof?,Which he replied in the negative. He ﷺ then said to him: You will then have his swearing.

As for the assertion that the accused must swear of his innocence if the prosecutor has no proofs to support his claim, that is because of the hadith of

Ibn Abbas ﷺ in Sahihayn that the Prophet ﷺ judged with: Swearing is upon the accused.

Al-Bayhaqi reported it with a sound chain with the wordings:

البَيِّنَةُ عَلَى المُدَّعِي وَاليَمِيْنُ عَلَى مَنْ أَنْكَرَ

The prosecutor is to produce proof, while swearing is upon the one who refused.

Ibn Hiban also reported the like of it from the hadith of Ibn Umar ﷺ, so also At-Tirmidhi from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather.

This is the opinion of the majority of scholars. However, it is reported that Malik opined that the accused would not be made to swear except there is intermingling or association between the prosecutor and the accused, so that the wicked will not make that an opportunity to put the innocents into problem.

This however is tantamount to rejecting the narration with a mere personal view.

As for the assertion that the judge will judge with one's self-acknowledgement or confession if he confesses or reports himself, there is no difference of opinion about that among the scholars, and that is the best basis upon which the judgment is conducted, provided the information given is not faulty. In addition, the assertion that one can confess his offence and that the judge should judge with it alone is so clear that it does not require citing proofs to support it. The Prophet ﷺ used to execute death punishment, give penalties, and freeze people's wealth with their self confessions. Rather, he used to conduct judgment in greater issues with it alone, such as stoning the adulterer and adulteress to death.

The example of such confession is found in the hadith:

وَاغْدُ يَا أُنَيْسُ إِلَى امْرَأَةِ هَذَا فَإِنِ اعْتَرَفَتْ فَارْجُمْهَا

O Unays! Go to this man's wife very early tomorrow morning; if she confesses being guilty, stone her to death.

The hadith is reported in As-Sahih, and it is going to be discussed better later.

If such greater punishment is executed only on this basis, there is no doubt therefore that a lesser one can be conducted with it.

As for the judgment with the witnesses of two men, or a man and two women, that is mentioned in the Qur'an, and there is no difference of opinion concerning it provided the witnesses are those people involved agreed upon, as stated in the Qur'an:

مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ

...such as you agree for witnesses [Al-Baqarah: 282]

As for the assertion that the judgment can be conducted in favour of the prosecutor with the witness of a man together with the swearing of the prosecutor, that is because of the hadith of Ibn Abbas ﷺ recorded by Muslim and some other collectors. He stated that the Prophet ﷺ conducted a judgment with a swearing together with a witness.

Furthermore, Ahmad, Ibn Majah, At-Tirmidhi, and Al-Bayhaqi reported from the hadith of Jabir ﷺ that the Prophet ﷺ conducted a judgment with a swearing together with one witness.

The hadith is from the hadith of Jafar binMuhammad, on the authority of his father, from Jabir ﷺ. It has also been mentioned from the hadith of Jafar bin Muhammad, on the authority of his father, from Ali ﷺ that the Prophet ﷺ conducted a judgment with a single witness and the swearing of the truth owner.

Ahmad and Al-Daraqutni reported it. In addition, Abu Awwanah and Ibn Khuzaymah authenticated the hadith from the report of Jabir ﷺ, and Abu Dawud, Ibn Majah, and At-Tirmidhi reported it from the hadith of Abu Hurairah ﷺ with the wording: the Prophet ﷺ judged with a swearing together with one person's witness.

The men of the chain of transmission of this report are trustworthy, and Abu Hatim and Zurah authenticated it.

Ibn Majah also reported it from the hadith of Surraq, and the men of the chain of its transmission are men of the Sahih record, except the narrator who narrated from Surraq; he is a week narrator. However, Ibn Aj-Jawzee mentioned

in the book At-Tahqiq the number of the companions that reported this way of judgment from the Prophet ﷺ; there were more than twenty companions. It is also mentioned that it is the opinion of the majority of the companions and the people that came after them.

It is reported from Zaid bin Ali, Az-Zuhri, An-Naqi, Ibn Shubrumah, and the Anafiyah that it is impermissible to judge with a witness and a swearing, but the narrations that have been cited under the section are enough to refute that claim.

As for the assertion that the judgment can be conducted with the swearing of the denier, that is because of what was mentioned earlier concerning it; that swearing is upon an accused who denied being guilty. It is established in Muslim from the hadith of Wail bin Hujur ﷺ that the Prophet ﷺ said to Al-Kindi: Do you have any proof? he replied in the negative. The Prophet ﷺ then said to him: He would then have to swear for you. He said, O Messenger of Allah, the man is a dissolute person, he neither cares over anything he swears nor does he fear (the consequence of) anything! The Prophet ﷺ then responded: He does not owe you anything other than that.

As for the fact that the swearing of refusal is permissible, that is because such chance will not be given except with the consent of the accused. Therefore, it does not matter whether we say it is compulsory upon the prosecutor to refute the swearing of the accused or not.

However, those who do not agree that this fact should be one of the bases upon which judgments are conducted made evidence with the general import of the statement of the Prophet ﷺ: But the swearing is upon the accused. That is as reported by Muslim and some other collectors in the wordings of the hadith of Ibn Abbas ﷺ. So also, they made evidence with the hadith of Wail, where the Prophet ﷺ said: He does not owe you anything other than that.

Moreover, that only informs that the swearing of refusal is not compulsory upon the prosecutor if the accused disagrees with it, but that does not imply its impermissibility if the accused requests for it or allows it. In addition, what Al-Daraqutni, Al-Halkim, and Al-Bayhaqi reported from the hadith of Ibn Umar ﷺ that the Prophet ﷺ refused the swearing of a truth owner is not authentic. Were it authentic, it would have been a specific ruling from the general one mentioned earlier. Its chain of transmission contains Muhammad bin Masruuq, and he is narrator whose state is unknown. The chain of transmission also contains Ishaq bin Al-Furaat, and there is an ill statement about him as well.

Furthermore, the Holy Qur'an has pointed to the fact that the swearing could be refuted, and that is the word of Allah:

أَنْ تُرَدَّ أَيْمَانٌ بَعْدَ أَيْمَانِهِمْ

...that the oath would be rejected after their oaths [Al-Maidah: 108]

However, there is possibility that the verse does not point to this, because the meaning of the rejection of an oath here may be not accepting it and not refuting it with another swearing.

Furthermore, the refusal of the accused to swear is not used as the basis for judgment, the worst that could be said concerning this is that he does not abide by the obligation the Shari'ah placed on him, and this cannot ordinarily imply being guilty. Moreover, since he has to fulfil the obligation of swearing as mentioned earlier in the narrations, the judge must compel him in one of these ways: to make the swearing that he refused to do, or to accept being guilty of the prosecutor's claim. If he does any of the two, it is sufficient for judgment.

As for the fact that the judge can conduct judgment with his previous knowledge as related to the case, that is because that way of judgment involves the truth and justice that Allah commanded in judgment and because there is no evidence to prevent such. As for the hadith, Your witness or his swearing, it does not provide a general ruling. However, from the proofs that support the permissibility of the judge to judge with his previous knowledge is what is established from the Prophet ﷺ that he said to a prosecutor: do you have any proof? This hadith gives evidence for this opinion because proof refers to anything that can show that something is true, and that is exactly what the knowledge does. Absolutely, there is no proof greater than one's real knowledge about something. It is the greatest proof with which a judgment could be ascertained.

In addition, all the bases upon which the judgment is conducted are suppositions; for instance, it is a supposition that someone who confesses his claim is truthful with his confession, so also someone who swears in the court, it is only a supposition that he is truthful with his swearing. Likewise a witness, it is only an assumption that it is not a perjury. Consequently, if it is permissible to conduct judgment with these bases that are only suppositions, why will it not be permissible with one's clear knowledge?

There is a difference of opinion about this issue, and the people of each of the opinions have made evidence for their claims. However, none of the evidences is suitable for the case. Moreover, the closest of them is what Ahmad, An-Nasai, and Al-Hakim reported from the hadith of Abu Hurairah رضي الله عنه. He said, two quarrelling men came to the Messenger of Allah ﷺ, and he ﷺ said to the

prosecutor among them, Produce your proof, but he did not give any. He ﷺ then said to the accused, You! Swear. The man then swore in the name of Allah, Whom sincere worship is due, that the prosecutor has no right with him. The Prophet ﷺ then said: You owe him a right, but you have been forgiven with your sincerity with the word — there is none sincere worship is due to except Allah alone —. In the narration of Al-Hakim, the Prophet ﷺ was reported to said: You have it with you, give it to him.

Concerning, the statements of the companions that are reported concerning this issue, it should be realized that the statements of the companions could not be used as evidence to support issues like this, except the statement becomes a general agreement among them. In addition, this condition is not a general one; it is only true with those who opine that the opinion of the majority of scholars is a form of evidence.

As for the assertion that the witness of an unjust person is not acceptable, that is because of the word of Allah:

وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ

...and take for witness two just persons from among you [At-Talaaq:2]

And His saying:

مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ

...such as you agree for witnesses [Al-Baqarah: 282]

So also His saying:

إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا

If a dissolute person comes to you with news, verify it [Al-Hujuraat: 6]

It is reported in Al-Bahr that the majority of scholars are of the opinion that even the clear witness of a dissolute person should not be accepted.

As for the assertion that the witness of a betrayer, people that have enmity among one another, and that of a suspect is not acceptable, that is because of the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather, collected by Ahmad, Abu Dawud, and Al-Bayhaqi. He ﷺ reported that the Prophet ﷺ said:

لَا تَجُوزُ شَهَادَةُ خَائِنٍ وَلَا خَائِنَةٍ وَلَا ذِيْ غِمْرٍ عَلَى أَخِيهِ وَلَا تَجُوزُ شَهَادَةُ القَانِعِ لِأَهْلِ البَيْتِ

The witness of a betrayer man and woman and someone having enmity against his fellow brother is not acceptable, so also the witness of a workman to a household is not permissible.

In the report of Abu Dawud, he has the addition: so also the witness of an adulterer and adulteress.

Ibn Hajar mentioned in At-Talkhis that the chain of transmission of the hadith is sound.

At-Tirmidhi, Al-Daraqutni, and Al-Bayhaqi reported it from the hadith of 'A'ishah ﷺ with a chain of transmission linked to the Prophet ﷺ with the wording, The witness of a betrayer man and woman is not acceptable, so also the witness of someone having grudges with his fellow brother, a suspect, and relatives to one another.

The chain of transmission of this hadith contains Yazid bin Ziyaad Ash-Shami, who is weak. Al-Daraqutni and Al-Bayhaqi reported the like of this hadith from the hadith of Ibn Umar; the chain of transmission contains Abdul-Aala and his teacher, Yahya bin Saeed Al-Farisi, who are both weak as well.

Abu Dawud also reported in Al-Marasil from the hadith of Talhah bin Abdillah bin Awf that the Messenger of Allah ﷺ sent someone to proclaim among people that the witness of people having dispute among one another is not acceptable, so also the witness of a suspect.

Al-Bayhaqi also reported the hadith from the path of Al-Aaraj with a Mursal chain that the Messenger of Allah ﷺ said: The witness of a suspect and someone having grudges is not acceptable.

However, the person having grudges mentioned in these narrations is someone

who keeps grudges or has enmity against the person who he is to witness, so also the suspect meant is someone who is suspected to make a false witness; for instance, a workman to the household he works for, or a slave to his master. Ibn Hajar reported in Al-Bahr a consensus over the fact that a slave is not permissible to witness his master.

Al-Hakim also reported that hadith from the hadith of Al-Alaa, on the authority of his father, from Abu Hurairah ﷺ. Ibn Hajar mentioned that the chain of the narration is questionable.

As for the assertion that the witness of a known false accuser is not acceptable, that is because of the word of Allah:

وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا

...and reject their testimonies for forever [An-Nur: 4]

And that is after His saying:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ

And those who accuse chaste women [An-Nur: 4]

However, there are differences of opinions of scholars in book of Tafseer and Islamic fundamentals as to the ruling concerning the forgiveness of someone who accused a chaste woman of an illicit act that is mentioned at the end of this verse.

As for the fact that the witness of a villager is not acceptable against a city person, that is because of the hadith of Abu Hurairah ﷺ that he heard the Messenger of Allah ﷺ saying:

لاَ تَجُوزُ شَهَادَةُ بَدَوِيٍّ عَلَى صَاحِبِ قَرْيَةٍ

The witness of a villager against a city person is not permissible

Abu Dawud, Ibn Majah, and Al-Bayhaqi reported the hadith.

Al-Mundhiri commented that Muslim reported some Ahadith in his Sahih having the men of the chain of their transmissions as the men of this hadith.

It is mentioned in An-Nihayah that the witness of a villager is said not to be acceptable against a city person because the villagers generally lack religious etiquettes and are mostly ignorant of Islamic rulings. In addition to that, they do not mostly know how to make witnesses as required under the Islamic teachings.

The kind of this comment is reported from Al-Khatabi and Ahmad bin Hanbal, and that is the opinion of a number of the companions of Ahmad, so also it is the opinion of Malik and Abu Ubayd. However, the large number of the people of knowledge opines that their witnesses are acceptable.

Ibn Raslan commented thus: Those people among the people of knowledge considered this hadith as talking in respect of someone whose trustworthiness is unknown among the villagers, however, what is obvious is that their trustworthiness is not often known. Therefore, that opinion remains valid.

This perception is a good one; it settles the disagreement in the issue.

As for the fact that the witness of someone who testified to a deed or statement he made is acceptable if it does not involve any suspicion, that is because nothing has come to negate that. Therefore, we cannot remove it from the general permission of accepting any good basis upon which a judgment can be conducted.

In addition, there is an evidence for this opinion from the hadith of the acceptance of the Prophet ﷺ the testimony of the foster mother who claimed to have breastfed a man and his wife. He ﷺ said to the man at the end of the event, as reported in the hadith: What then do we do when that has been said?, and the ruling regarded the issue was based on her testimony alone.

This hadith has been mentioned earlier under the section of fosterling; she testified to her deed as related in the hadith.

Moreover, the people who opposed this opinion have only rejected it with the claim that it involves suspicion, however, we have responded to this claim with the condition that any case treated this way must not involve suspicion.

As for the assertion that perjury is one of the greatest sins, that is because of the hadith of Anas ﷺ in Sahihayn and some other collections. He said, the

Prophet ﷺ spoke about the grievous sins or was asked about them, he ﷺ said:

الشِّرْكُ بِاللَّهِ وقَتْلُ النَّفْسِ وعُقُوْقُ الوَالِدَيْنِ وقَالَ : أَلَا أُنَبِّئُكُمْ بِأَكْبَرِ الكَبَائِرِ ؟ قَالَ : قَوْلُ الزُّورِ أَو قَالَ شَهَادَةُ الزُّورِ

Associating partner with Allah, killing, and disobedience to parents; he then said: do I inform you of the greatest ones? Falsehood and perjury

In Sahihayn as well, from the hadith of Abu Bakrah ﷺ, it is reported that the Messenger of Allah ﷺ said:

أَلَا أُنَبِّئُكُمْ بِأَكْبَرِ الكَبَائِرِ ؟ قَالُوا : بَلَى يَا رَسُولَ اللَّهِ قالَ : الإِشْرَاكُ بِاللَّهِ ، وعُقُوقُ الوَالِدَيْنِ, وَكانَ مُتَّكِئًا فَجَلَسَ فَقَالَ : أَلَا وَقَولُ الزُّورِ وشَهَادَةُ الزُّورِ ، فَمَا زَالَ يُكَرِّرُهَا حَتَّى قُلْنَا لَيْتَهُ سَكَتَ

Do I not inform you of the greatest sins? They replied, No! O messenger of Allah, he – sallallahu alayhi wa sallam - then said: Associating partner with Allah and disobedience to parents. At the time, he was reclining; he sat properly and said, Beware! So also Perjury, and he did not seize repeating it until we wished that he stopped.

As for the assertion that in the case of contradiction of proofs, such that none can be established against the other, the judgment will go half way to both parties, that is because of the hadith of Abu Musa ﷺ that is collected by Abu Dawud, Al-Hakim, and Al-Bayhaqi. It is reported that two men claimed ownership to a camel during the time of the Prophet ﷺ, and each of them produced his two witnesses. The Prophet ﷺ shared it into two between them.

Ibn Hiban reported the like of the hadith from the hadith of Abu Hurairah ﷺ and rated it authentic, Ibn Abi Shaybah reported it as well from the hadith of Tameem bin Tarafah, so also at-Tabarani with a chain of transmission linked to the Prophet ﷺ from the hadith of Jabir bin Samrah.

Certainly, it is established that the Prophet ﷺ judged with the right half-way between two parties whose proofs cannot be established against each other. That is what Ahmad, Abu Dawud, Ibn Majah, and An-Nasai reported from the hadith of Abu Musa ﷺ that two quarrelling men came to the Messenger of Allah ﷺ over the matter of an animal between them and both of them do

not have proofs for their claims. He ﷺ then shared the animal out between them.

This judgment is also established from the Prophet ﷺ in another hadith, and that is the hadith of Abu Musa ﷺ that was mentioned first, but there is an addition in the hadith with An-Nasai that wasn't mentioned then. He added that the Prophet ﷺ said to them: Look for the animal, and they found it with another man. The two of them then produced their witnesses and the third did not; the animal was thereby, taken from him and was given to the two men.

As for the assertion that if the prosecutor does not have any proof, the accused will only be made to swear and the prosecutor will have no right thereafter even if the accused is a dissolute person, that is because of the hadith Al-Ashath bin Qays ﷺ in Sahihayn and some other collections. He said, There was a disagreement between me and a man over a well, and we went to the messenger of Allah ﷺ for settlement. He ﷺ said: Your proof or his swearing. I then said: He will swear, he does care! The Prophet ﷺ then said:

مَنْ حَلَفَ عَلَى يَمِينٍ يَقْتَطِعُ بِهَا مَالَ امْرِئٍ مُسْلِمٍ لَقِيَ اللَّهَ وَهُوَ عَلَيْهِ غَضْبَانُ

Whosoever makes a false swearing in order to get away with a Muslim's property will meet Allah while He is angry with him.

Muslim and some other collectors reported from the hadith of Wail bin Hujur ﷺ that the Prophet ﷺ said to Al-Kindi: Do you have any proof?" He replied: No. He ﷺ then said: You then will have his swearing. He said, O Messenger of Allah, the man is a dissolute person, he cares not about what he swears upon and he does not fear anything. The Prophet ﷺ then said: He doesn't owe you other than that.

Consequently, if an accused is asked to swear, it then becomes the basis for judgment, and nothing will be accepted thereafter. That is so because the two parties only have suppositional proofs, and none of them can override the other except with that which is established. That is the opinion of some of the people of knowledge, and the difference regarding that is known.

As for the assertion that whoever acknowledges something will bear its responsibility, that is because of what is discussed earlier related to that.

As for the conditions that such person must be sane and matured, that is because the insane and immature people do not have any religious

responsibility placed upon them. Therefore, there will be no consideration for their acknowledgements.

However, as for the condition that he must be serious, that is because no consideration can be given to the acknowledgment of a joking person. So also, the acknowledgment must be over a feasible thing, both morally and mentally, that is because if it is not that way it will be nothing but falsehood.

In addition, as for the assertion that an acknowledgment given once is enough to be considered for judgment, even for punishable offence and others, that is because anyone who acknowledges something is held responsible for it. However, the opinion that if the offence is a punishable one that the acknowledgment needs to be made several times does not have any religious basis, and we shall discuss that extensively later.

27 كتاب الحدود
Book of Legal Punishments
Hudud

باب حَدّ الزَّانِي

Chapter 27.1 Punishment for Adultery and Fornication

If it is an unmarried and free person, he/she should be flogged with a hundred lashes of cane and thereafter be sent a year exile, but if it is a married person, he/she would be flogged the way an unmarried person be flogged and then be stoned to death. It is enough that an adulterer or adulteress confesses or acknowledges his/her offence once, and what is reported about giving acknowledgment several times was only for special cases and it was only requested for confirmation. However, for the case of testimony, there must be four witnesses. For two cases: self-confession and the testimony, it must be ascertained that the man copulated with the woman. The punishment for adultery and fornication will become unenforceable for any doubt that the act happened for the case of testimony, and with withdrawal of confession for the case of self-confession. So also, it will become unenforceable upon a woman if she is known to be a virgin, and for a man if he is insane or impotent. Intercession is forbidden in punishable offences, and a hole is dug for whom to be stoned to death to the chest level. Furthermore, a pregnant woman is not stoned to death until she puts to bed and weans the baby if there is no other than her to breastfeed the baby. Flogging of a sick person is permissible with a bunch palm-date leaves and the likes. Anyone who practices homosexuality is killed even if the person is unmarried, so also the person it is done with, if he/she did it at wish, and anyone who cohabits with an animal should be punished. In addition, a slave man or woman who committed illegal sexual intercourse

would be flogged a half of the flogging of a free person, and his master or the authority can do that.

Explanation:

I say: As for the assertion that a fornicator man and woman should be flogged with a hundred lashes of cane, that is because of the word of Allah:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ

The adulterer and the adulteress flog each of them with a hundred of strip [An-Nur: 2]

The Ahadith under this section are many.

As for sending him a year exile, that is because of the hadith of Abu Hurairah ﴿ﷺ﴾ in Sahihayn and some other collections. He reported that a Bedouin Arab came to the Messenger of Allah ﴿ﷺ﴾ and said: O messenger of Allah, I ask you by Allah that you settle between me and this man with the Book of Allah. The other man, who was better in understanding than the first, then said, Judge between us with the book of Allah, but permit me to explain what transpired. The Messenger of Allah ﴿ﷺ﴾ then said to him, You can talk. The man explained: My son was a worker under this man and he fornicated with his wife, and I was informed that my son has to be stoned to death. I therefore paid me a ransom with hundred head of sheep and a slave woman. I thereafter asked the people of knowledge, and was told that the punishment of my son is a hundred strips of cane and a year expulsion, and that his wife has to be stoned to death. The Prophet ﴿ﷺ﴾ then said:

وَالَّذِي نَفْسِي بِيَدِهِ لأَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ الْوَلِيدَةُ وَالْغَنَمُ رَدٌّ عَلَيْكَ وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ وَاغْدُ يَا أُنَيْسُ إِلَى امْرَأَةِ هَذَا فَإِنِ اعْتَرَفَتْ فَارْجُمْهَا

By Allah whom my soul belongs, I shall judge between you with the book of Allah; the slave woman and the sheep be returned to you and your son has to be flogged with a hundred lashes and be sent on a year exile. O Unays! Go very early tomorrow morning to that man's wife, if she admits, stone her to death.

He then went to her very early the following morning and she admitted. The Prophet ﷺ then ordered that she be stoned to death.

There is another hadith in Bukhari and some other collections from the hadith of Abu Hurairah ﷺ that the Prophet ﷺ ruled in respect of a man who committed fornication that he should be flogged and sent on a year exile.

In addition, Muslim and some other collectors reported from the hadith of Ubadah bin Saamit that the Prophet ﷺ said:

وَالَّذِي نَفْسِي بِيَدِهِ لأَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ الْوَلِيدَةُ وَالْغَنَمُ رَدٌّ عَلَيْكَ وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ وَاغْدُ يَا أُنَيْسُ إِلَى امْرَأَةِ هَذَا فَإِنِ اعْتَرَفَتْ فَارْجُمْهَا

Take it from me! Take it from me! Allah has paved way for them, for the unmarried man with an unmarried woman, a hundred strips of flogging and a year expulsion, and for the married man with an unmarried woman, a hundred strips of flogging and stoning to death.

The majority of scholars have the opinion that an unmarried person who committed fornication should be sent exile, and Muhammad bin Nasr claimed in the book Al-Ijmaa that there is a consensus of scholars on it except those who differ from the people of Al-Kufah. So also, Ibn Al-Mundhir mentioned that all the rightly guided caliphs worked with that and no one frowns at it among the companions ﷺ, which is then understood as their consensus.

Moreover, those who opine that expulsion is not included in the punishment for an unmarried person who commits fornication do not provide any convincing evidence; their utmost evidence is that it is not mentioned in some of the narrations that spoke about the punishment. However, it is not compulsory that it is mentioned in all the narrations regarding this issue, it is enough that it is mentioned in some.

Furthermore, those who opine that expulsion is involved also differ about the case of a woman, should a woman be expelled as well or not? Malik and Al-Awzai opine that there is no expulsion upon a woman, because she is nakedness. Nevertheless, what is apparent from the evidence is that there is no difference between men and women as far as this issue is concerned.

As for flogging the married person before stoning to death, that is because of the evidence that will be mentioned shortly. However, if it is said that the punishment does not involve flogging because of the practice of the Prophet

﴿ﷺ﴾ where he only commanded that Maiz, Al-Gamidiyah, and the male and female Jews that committed adultery be stoned to death without been flogged. Summarily, both the two opinions are correct on the issue.

As for the fact that an acknowledgment made once is enough to carry out judgment, that is because making judgment with someone's confession or acknowledgment is established in the Shari'ah in any case, therefore, whoever claims that the acknowledgment has to be made several times should come with proofs.

Furthermore, there is no proof for the claim that the confession has to be made four times, except what happened in the case of Maiz where he affirmed his confessions several times, and there is no evidence that Prophet ﴿ﷺ﴾ or anyone commanded him to do that. In addition, it is not established from the Prophet ﴿ﷺ﴾ in any of his commandments that one's confession of adultery has be made four times, and his ﴿ﷺ﴾ not carrying out punishment on Maiz with his first confession was only to confirm his state, and that was why he asked him: Are you okay? He also went further to ask his family about his sanity. Aside this case, the Prophet ﴿ﷺ﴾ conducted judgment with one time confession, as reported in Sahihayn and some other collections with his statement ﴿ﷺ﴾: O Unays! Go very early in the morning tomorrow to this man's wife; if she admits, stone her to death. It is also established that she carried out the punishment of adultery on Al-Gamidiyah and she did not pronounce the confession except once, as reported in Sahih Muslim and some other collections. Abu Dawud and An-Nasai also reported from the hadith of Khalid bin Al-Lajlaaj on the authority of his father, that the Prophet ﴿ﷺ﴾ conducted the punishment of adultery on man with only pronouncement. Among the evidences that support this fact is the hadith of a man whom a woman claimed that he committed illegal sexual intercourse with her, and the Prophet ﴿ﷺ﴾ ordered that he should be stoned to death. A man later came to confess that he was the one who had the illicit act with her and the Prophet ﴿ﷺ﴾ commanded that he should be stoned to death as well. In another narration, it is reported that he pardoned him, and the hadith is reported by At-Tirmidhi and An-Nasai. Another instance is the case of the Jewish man and woman the Prophet ﴿ﷺ﴾ carried out the punishment of stoning to death upon, it is reported that they were asked for confirmatory confession. Consequently, if it were necessary that the acknowledgment or confession must be four times, these cases would not have occurred that way. Therefore, the narrations that have it that the Prophet ﴿ﷺ﴾ delayed judgment after the first confession was only to affirm the confession, and it would be understood as the condition for ambiguous cases where the person's sanity, serenity, drunkenness, etc., are needed to be confirmed. And only one confession will be taken for whom his sanity is known.

As for the assertion that the witnesses that should be considered for adultery must be four, that is because of the certainty that is required in the punishable

offences for the fact that punishments are abolished if any doubt is involved. Therefore, because there is no doubt in self-confession, it is taken as one of the bases for judgment. Because if someone testifies against him/her self, he/she has cleared any doubt whatsoever in the case, compared to people's witnesses against one another which may involve doubts. This is very clear and understandable, and a number of the people of knowledge among the companions and those who came after them bear this opinion. The author of the book Al-Bahr narrated that as being the opinion of Abu Bakr, Umar, Al-Hasan Al-Basari, Malik, Hamaad, Abu Thawr, Al-Busti, and Al-Shafi'i, but the majority of scholars opine that self-testimony must be given four times. However, as for the assertion that the witnesses must be four, I do not know any difference regarding that, the Qur'an and Sunnah point to that.

As for the assertion that for the two cases, self-confession and four people witnesses, it must be ascertained that the man copulated with the woman, that is because of the questions of the Prophet ﷺ to Maiz: You probably kissed her, or hug her, or looked at her he replied: No! O messenger of Allah, he ﷺ then said to him: Did you copulate with her? He then replied: yes. The Prophet ﷺ thereof commanded that he be stoned to death.

Al-Bukhari and some other collectors reported the hadith from the hadith of Ibn Abbas رضي الله عنه.

Abu Dawud, An-Nasai and Al-Daraqutni reported another hadith from the hadith of Abu Hurairah رضي الله عنه. He said, Al-Aslamee came to the Messenger of Allah ﷺ four times testifying against himself that he fornicated with a woman, and the Prophet ﷺ turning away from him each time. He came the fifth time, the Prophet ﷺ turned to him and asked: Did you copulate with her? he replied: Yes, he ﷺ then asked: Is it as a kohl stick enters a kohl jar, or a rope penetrates a well?, and he replied in the affirmative.

The chain of transmission of this hadith contains Ibn Al-Hashaas; Al-Bukhari mentioned that his hadith from the people of Hijaaz is not known except this one. In addition, the like of the incidence has been reported from Umar رضي الله عنه in the story of his interrogation of the witnesses of Al-Mugiarah in the presence of the remaining companions without anyone stopping him.

As for the fact that punishments become unenforceable for any doubt, that is because of the hadith of Abu Hurairah رضي الله عنه. He reported that the Prophet ﷺ said, Avert the Muslims of punishments as much as you can; if there is a loophole for them to escape the punishment, leave them to escape. Verily, that an authority mistakenly pardons a criminal is better for him than to mistakenly carry out punishment on the innocents.

At-Tirmidhi collected the hadith. He collected it as well from the hadith of Az-Zuhri, on the authority of Urwah from 'A'ishah رضي الله عنها, and the hadith has

been condemned with the claim that it is a hadith that is only linkable to the companions of the Prophet ﷺ. But Ibn Majah reported another hadith from the hadith of Abu Hurairah ﷺ with a linkable chain of transmission to the Prophet ﷺ and with the wording: Avert people of punishment as much as can found a way out for them. It is reported from the hadith of Ali ﷺ with a linkable chain of transmission to the Prophet ﷺ also, with the wording: Ward off punishment with doubts The like of it is also reported from Umar and Ibn Mas'ud ﷺ with authentic chains of transmission. Some other narrations are available under the section that can give support to one another, and among what can support this fact is the statement of the Prophet ﷺ:

لَوْ كُنْتُ رَاجِمًا أَحَدًا بِغَيْرِ بَيِّنَةٍ لَرَجَمْتُهَا

If I were to carry out stoning to death without (reliable or convincing) proofs, I would have stoned her.

It is reported by Ibn Abbas ﷺ, as recorded in Sahihayn and the woman is a woman from Al-Ajlaani.

As for the assertion that the punishment becomes unenforceable with one's withdrawal of his/her confession, that is because of the hadith of Abu Hurairah ﷺ that is reported by Ahmad and At-Tirmidhi. He said, Maiz was ordered to be stoned to death and people started stoning him, when he experienced falling of stones of his body he ran away until a man carrying hard palate of a camel met him on his way, he then hit him with it, people later caught up with him and beat him to death. They then informed the Prophet ﷺ of what transpired, he ﷺ then said: Why did you not leave him?

At-Tirmidhi after reporting the hadith commented that it is a sound hadith. The hadith has also been reported with other than this chain from Abu Hurairah ﷺ and the men of its chain of transmission are trustworthy.

Abu Dawud and An-Nasai reported the kind of the hadith from the hadith of Jabir ﷺ and he added that when the man experienced falling of stones on him, he screamed and said, O people! Return me to the Messenger of Allah; it is my people who caused this to me, they deceived me, they informed me that the Messenger of Allah was not going to kill me, but we did not stop stoning him until we killed him. We then returned to the Messenger of Allah ﷺ and informed him, he ﷺ said: Why did you not leave him and bring him back to me?

Al-Bukhari and Muslim reported a section of this hadith, and there are other reports concerning this narration.

Ahmad, Al-Shafi'iyah, Al-Hanafiyyah, and Itriyah bear this opinion, and it is reported as one of the opinions of Malik on this issue. However, Ibn Abi Laylah, Al-Busti, and Abu Thawr are of the opinion that withdrawal is not acceptable after confession, and that is one of the opinions reported from Malik and Al-Shafi'i as well.

As for the fact that the punishment will become unenforceable upon a woman if she is found or known to be a virgin, and upon a man, if he is insane or impotent, that is because these are excuses that could prevent anyone who has any of them from been punished. Thereby the self-confession or people witnesses will be nullified in any case as such confession or witnesses would be tantamount to falsehood. It is reported that the Prophet ﷺ sent Ali ﷺ to kill a man that was reported to him that he used to enter into Maariyah Al-Qibtiyah ﷺ. He went to the man and found him swimming in a pool of water, he brought him out of water to kill him but found him insane. He left him and returned to the Prophet ﷺ to inform him of the situation. The story is long and known, and that is the summary.

As for the assertion that intercession is prohibited in punishable offences, that is because of what is reported by Ahmad, Abu Dawud, and Al-Hakim; which Al-Hakim as well authenticated, from the hadith of Ibn Umar ﷺ that the Prophet ﷺ said:

مَنْ حَالَتْ شَفَاعَتُهُ دُونَ حَدٍّ مِنْ حُدُودِ اللَّهِ فَهُوَ مُضَادُّ اللَّهِ فِي أَمْرِهِ

Whosoever intercedes to avert a penalty from the penalties ordained by Allah has opposed Allah in His order.

And in Sahihayn from the hadith of 'A'ishah ﷺ from the story of a woman from Al-Makhzuum clan that stole something, when Usamah bin Zaid ﷺ interceded on her behalf from the Prophet ﷺ, he ﷺ said:

أَتَشْفَعُ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ؟

Do you intercede to avert a penalty from the penalties ordained by Allah?

In another narration, it has it that:

I should not see you interceding to avert a penalty from the penalties ordained by Allah.

Ahmad, the reporters of As-Sunan, Al-Hakim; who as well authenticated it, and Ibn Jarud reported that the Prophet ﷺ said to Safwan رضي الله عنه when he interceded on behalf of a man who stole his clothes at the point of carrying out the penalty of hand-cutting on him:

فَهَلاَّ كَانَ قَبْلَ أَنْ تَأْتِيَنِي بِهِ

Should that not supposed to be before you brought him?

There are other narrations under the section as well.

As for the fact that a hole is dug for whom to be stoned to death, that is because the Prophet ﷺ ordered that a hole be dug for Al-Gamidiyah to her chest level, as reported by Muslim and some other collectors from the hadith of Abdullah bin Buraydah. Also in Sahih Muslim and some other collections, it is reported that they dug for Maiz as well before he was stoned, as mentioned in the hadith of Abdullah bin Buraydah in the story Maiz. Ahmad also reported the story with the addition: they dug a hole for him to his chest level.

Ahmad, Abu Dawud, and An-Nasai reported from the hadith of Khalid bin Al-Lajlaaj on the authority of his father that a man witnessed against himself concerning adultery, and the Prophet ﷺ asked him: Are you married? He answered in affirmative. He ﷺ then ordered that he should be stoned to death. We then went and dug a hole for him such that we could track him down; we thereof stoned him until he died.

However, it is established in Muslim and some other collections that Abu Saeed رضي الله عنه said: When the Prophet ﷺ ordered us to stone Maiz, we went with him to Al-Baqi, by Allah! We neither dig any hole for him nor tie him.

What is reported here that no hole was dug for him is supported by what is mentioned in the narrations of other companions that he ran away while he was been stoned, as it was mentioned earlier. However, not digging a hole for Maiz does not abolish the legality of digging holes for those to be stoned to death.

As for the assertion that a pregnant woman is not be stoned to death until

she delivers her baby, and also weans him if there is no one else to breastfeed him, that is because of the hadith of Sulayman bin Buraydah on the authority of his father, as collected by Muslim and some other collectors. It is reported that a woman from Gaamid part of Al-Azad clan came to the Prophet ﷺ and said: Purify me! The Prophet ﷺ said to her: Go back and seek Allah's forgiveness, she then said: I can notice that you intend to send me back like you did to Maiz bin Malik. The Prophet ﷺ then asked: What is that? She replied: I am pregnant from adultery. He ﷺ then asked: You?, And she replied in affirmative. The Prophet ﷺ then said: Until you deliver your pregnancy. He added that a man from Ansar then volunteered to take care of her until she gave birth. The man then came to the Prophet ﷺ later and said: That woman of Al-Gamidiyah has put to bed. The Prophet ﷺ replied him:

إِذًا لاَ نَرْجُمُهَا وَنَدَعُ وَلَدَهَا صَغِيرًا لَيْسَ لَهُ مَنْ يُرْضِعُهُ

We would not stone her now and leave her baby without anyone to breastfeed him.

A man from the Ansar then stood and said, O messenger of Allah! I will take care of his breastfeeding. He ﷺ then stoned him to death.

In addition, Muslim and some others reported from the hadith of Imran bin Husayn that a woman from Juhaynah clan came to the messenger of Allah and she was pregnant from adultery, she said: O messenger of Allah, I committed a crime that warrants penalty, carry out the necessary punishment on me. The Prophet ﷺ then called upon her guardian and said to them: Take good care of her and inform me when she puts to bed. The man did what he was commanded, and the Prophet ﷺ ordered that she be stoned to death when she was later brought. They then tied her up in her clothes and stoned her until she died. This story is narrated from the hadith of Abu Hurairah, Abu Saeed, Jabir bin Abdillah, Jabir bin Samrah, and Ibn Abbas ﷺ, and Muslim reported all their narrations.

The narrations regarding this story are reported with different wordings; some of them contained what was mentioned earlier in the hadith of Buraydah, while some others have it that the Prophet ﷺ delayed the stoning till she came back after weaning her baby, and scholars have tried to unite between those narrations.

As for the fact that flogging a sick person is permissible with a bunch of palm-date leaves or the likes, that is because of the hadith of Abu Umamah

bin Sahl on the authority of Saeed bin Sad bin Ubadah. He said, There was a weak disabled man in our district, and was caught fornicating with a slave girl from the slave girls in the district. Sad bin Ubadah reported him to the Prophet ﷺ because the man was a Muslim. The Prophet ﷺ said to him: Flog him with the prescribed punishment, Sad replied: O messenger of Allah, he is weaker than your thought, if we flog him hundred lashes of cane he will die. The Prophet ﷺ then said: Make a bunch of hundred stripes from palm-date leaves and flog him with it only once. They then did as the Prophet ﷺ commanded.

Ahmad, Ibn Majah, Al-Shafi'i and Al-Bayhaqi reported this hadith. Al-Daraqutni also reported it from the path of Fulayh bin Abi Aslam, who reported it from Sahl bin Sad ﷺ. At-Tabarani reported it as well, from the hadith of Abu Umamah, from Abu Saeed Al-Khudri ﷺ, and Abu Dawud reported it from the path of a man from Al-Ansar. An-Nasai reported it as well, but from the hadith of Abu Umamah bin Sahl bin Hunayf, from his father and its chain of transmission is sound.

However, Muslim and some other collectors reported from the hadith of Ali ﷺ that he said: A slave girl of the Prophet ﷺ committed illegal sexual intercourse and the Prophet ﷺ ordered me to flog her. When I got to her, I found that she was in her post menstrual blood period and I feared that I killed her if I flogged her in that condition. I then mentioned that to the Prophet ﷺ and he said: Well done! Leave her until she is able to withstand the flogging.

Scholars have tried to unite between this hadith and the first that if the sickness is such that the sick person is expected to be healed from it after a while; he is left until he recovers from it, as it is reported in this hadith. However, if it is such that the sickness is permanent, the person is flogged, as it is in the first hadith.

It is mentioned in Al-Bahr that the majority of scholars opine that flogging should be delayed from sunrise, when the intense of the sun is high, until after noon, when the intense is low, and from the cold until the weather is moderate. So also, it should be delayed from the time of sickness, that which the sick person is expected to be healed from, until he recovers from it. If however, it is a permanent sickness, Al-Hadi and the people of Al-Shafi'i hold that he should be flogged if he can withstand it.

Moreover, Al-Muayyad Billah and An-Nasir opine that he should not be flogged even if the sickness is a permanent one.

As for the assertion that whoever commits homosexuality is killed, even if he is not married, so also his partner, if he does it out of wish, that is because of the hadith of Ibn Abbas ﷺ reported by Ahmad, Abu Dawud, Ibn Majah, At-Tirmidhi, Al-Hakim and Al-Bayhaqi that the Messenger of Allah ﷺ said:

مَنْ وَجَدْتُمُوهُ يَعْمَلُ عَمَلَ قَوْمِ لُوطٍ فَاقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ

Whoever you find doing the act of the people of Lout (Lot), kill the doer and whom it is done with.

Ibn Hajar, while commenting about the hadith, said: The men of its chain of transmission are trustworthy narrators except that there is a difference of opinion about its authenticity.

In addition, Ibn Majah and Al-Hakim reported from the hadith of Abu Hurairah ﷺ that the Prophet ﷺ said: Kill the doer and whom it is done with, whether married or unmarried However, the chain of its transmission is weak.

Ibn At-Tilaai mentioned in his book Al-Ahkaamu that it is not established that the Prophet ﷺ stoned anyone who practiced homosexuality to death or that he ruled concerning it; it is only established that he said: Kill the doer and the person it is done with as reported by Ibn Abbas and Abu Hurairah ﷺ.

However, Al-Bayhaqi reported that Ali ﷺ stoned someone who practiced homosexuality to death.

Al-Shafi'i commented concerning it: That is what we are going to hold on to, stoning anyone who practiced homosexuality to death, whether married or unmarried.

Al-Bayhaqi also reported that Abu Bakr assembled people concerning the case of a man who practiced homosexuality and asked the companions of the Prophet ﷺ concerning that, and among some of them who had strong opinions regarding the issue was Ali ﷺ. He said: That is a sin that is not committed by any nation from the nations ever in creation except one, and Allah dealt with them with what you all know. I therefore suggest that we burn him. The companions of the Prophet ﷺ then agreed to burning him alive, Abu Bakr then sent to Khalid bin Al-Walid to burn him.

Abu Dawud reported that Saeed bin Jubayr and Mujahid reported that Ibn Abbas said concerning a young girl found having sex with a lesbian: She should be stoned to death. Also, Al-Bayhaqi reported that Ibn Abbas ﷺ was asked about the punishment of a homosexual, and he replied: People should look for the topmost building in the town and throw him upside-down from the top of the building, and then follow it with stoning.

Moreover, scholars differ about the penalty of homosexuality, while they agree upon the fact that it is forbidden and that it is one of the greatest sins. Some of the people that were mentioned up here among the companions opine that the penalty is killing, whether the doer or the one who it is done with, and that is the opinion of Al-Shafi'i, An-Nasir, and Al-Qasim bin Ibrahim. In addition, the author of the book Shifaau al-Awaam reported the consensus of the companions of the Prophet ﷺ on that, and Al-Bagawi reports that Ash-Shabi, Az-Zuhri, Malik, Ahmad and Ishaaq opine that a homosexual should be stoned to death, whether married or unmarried. So also At-Tirmidhi, he collected the same hadith from Malik, Ahmad and Ishaaq. It is also mentioned that An-Naqi said: Were it possible to stone an adulterer to death twice, it should have been the punishment for a homosexual. Al-Mundiri while commenting on it, said: Abu Bakr, Ali, Abdullah bin Zubayr and Hisham bin Abdil-Malik in their regime ruled that a homosexual be burnt.

However, some other people among the scholars bear the opinion that the penalty for a homosexual is the same as the penalty of an adulterer, and Al-Shafi'i, from what is popular from him, opine that his penalty is the same as the penalty of an adulterer; if he is married, stoning to death, otherwise, flogging and expulsion. And according to his opinion, the one the act is done with should only be flogged and expelled. In another statement reported from him, he opined that the doer and the one the act is done with should have the same punishment. And in another statement, he opined that both of them should be killed. However, Abu Hanifah opined that they should not be given any of these specified punishments, rather; they should only be given lesser punishments as a way of reprimanding them.

As for the fact that whoever cohabits with an animal should be punished, that is because of the hadith of Ibn Abbas ﷺ that the Prophet ﷺ said:

مَنْ وَقَعَ عَلَى بَهِيمَةٍ فَاقْتُلُوهُ وَاقْتُلُوا الْبَهِيمَةَ

Whoever cohabits with an animal, kill him and the animal

Even though Ahmad, Abu Dawud, At-Tirmidhi, An-Nasai and Ibn Majah reported the hadith, At-Tirmidhi and Abu Dawud has reported from the hadith of Abu Razin that Ibn Abbas ﷺ said: There is no specified punishment for anyone who cohabits with animal. In addition, At-Tirmidhi after reporting the hadith said, this hadith is preferred to the first hadith, and upon it the people of knowledge based their verdicts.

However, Abu Yalaa Al-Musali reported the kind of the hadith of Ibn Abbas ﷺ concerning killing of someone who cohabits with animal from the hadith of Abu Hurairah, but the chain of its transmission contains Abdul-Gaffar.

Ibn Adyy commented concerning him: he later left the opinion and it is reported that they used to dictate for him.

Moreover, it is agreed upon by the scholars that cohabiting with animal is forbidden as reported by the author of Al-Bahr they only disagree about the punishment. Some of them opine that the penalty is the penalty of adultery, while some opine that there is no specified punishment for it and that the punishment should not be that of adultery since it is not adultery. Some other people opine that the person should be killed.

Furthermore, we have the opinion that he should be punished even if it is not a specified one, but in a way of reprimanding him, because he committed an act that its forbiddance is generally agreed upon, and that should fetch him punishment.

That is the least of the punishment he could be given.

As for the assertion that the flogging of a slave is half of that of a free person, that is because of the word of Allah:

فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ

...if they commit illegal sexual intercourse, their punishment is half that for free (unmarried) women [An-Nisa: 25]

More so, there is no one who makes any difference between a male and female slave regarding this issue, as reported by the author of Al-Bahr.

Abdullah bin Ahmad reported a hadith in Al-Musnad from the hadith of Ali ﷺ concerning that. He ﷺ said: the Prophet ﷺ sent me to flog a black female slave that committed illegal sexual intercourse, but I found her in her period of flow of blood. I then informed the Prophet ﷺ of her situation and he ﷺ said: When she is clean of her post-birth blood, flog her with fifty stripes of cane. The hadith is also in Sahih Muslim as was mentioned earlier but without the addition of fifty stripes of cane.

Malik also reported a hadith in Al-Muwatta from Abdullah bin Ayyash Al-Makhzuumi concerning the issue, he said: Umar bin al-Khataab ordered me

concerning some young slaves of Quraysh, we flogged them from house to house fifty stripes of cane, for illegal sexual intercourse.

Ibn Abbas ﷺ had the opinion that there is no punishment upon unmarried slaves until they get married owning to the verse:

فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ

And after they have been taken in wedlock, if they commit illegal sexual intercourse, their punishment is half that for free (unmarried) women [An-Nisa: 25].

However, this claim had been responded to with the fact that the meaning of Uhsinna in the verse that is interpreted to mean, after they have been taken in wedlock refers to Islam, that is, after they have accepted Islam.

As for the assertion that the master and the authority are both in the position to carry out the punishment on a slave, as for the authority, that is because of the general evidence concerning carrying out penalty. However, for the master, that is because of hadith of Abu Hurairah ﷺ in Sahihayn from the Prophet ﷺ:

إِذَا زَنَتْ أَمَةُ أَحَدِكُمْ فَتَبَيَّنَ زِنَاهَا فَلْيَجْلِدْهَا الْحَدَّ وَلاَ يُثَرِّبْ عَلَيْهَا ثُمَّ إِنْ زَنَتْ فَلْيَجْلِدْهَا الْحَدَّ وَلاَ يُثَرِّبْ عَلَيْهَا ثُمَّ إِنْ زَنَتِ الثَّالِثَةَ فَتَبَيَّنَ زِنَاهَا فَلْيَبِعْهَا وَلَوْ بِحَبْلٍ مِنْ شَعَرٍ

When it becomes obvious that your female slave commits illegal sexual intercourse, carry out the prescribed penalty of flogging on her, and do not follow it with scolding. If she commits it the second time, carry out the prescribed penalty of flogging on her as well, and do not follow it with scolding; and if she obviously does it the third time, sell her off even if it is just for a string of hair.

A large number of the Salaf (pious predecessors) bear the opinion that a master can carry out flogging on his slave, and among them is Al-Shafi'i, but the Itrah opine that the punishment should only be carried out by the authority, and that a master can only do that if there is no authority in place.

باب حدّ السَّرِقَة

Chapter 27.2 The Punishment for Theft



If anyone who is considered responsible religiously steals any saved item worth one-fourth of a dinar or more, at will, he should have his right hand chopped off. It is enough to carry out this punishment on anyone who is guilty of the crime with his self-confession only one time, or with witnesses of two trustworthy men. However, it is encouraged to prompt an accused person whom his being guilty is unlikely or doubtful, to protest his innocence. When the hand is chopped off, the spot of cutting should be treated, and it is part of the punishment that the chopped hand is fastened to the neck of the thief. Moreover, the punishment can be withdrawn with the pardon of the owner of the stolen item before the case gets to the authority but it cannot be withdrawn once it gets to the authority ; rather to carry out the punishment on him becomes imperative. There is no cutting of hands if fruits and palm-pith is taken by passers-by, in as much as they do not carry them along with them. If he does carry them, he will be charged with twice the cost of what he carried and be given exemplary punishment. In addition, there is no punishment of cutting upon an embezzler (a cheat), looter and pilferer, but it is established in the case of the denial of a loan taken.

Explanation:

I say: As for the condition that the punishment should be carried out upon someone who is considered responsible religiously and does the stealing at will, that is because of what was discussed earlier regarding that.

As for the penalty of cutting for theft, that is because of the word of Allah:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا

Cut off the hand of the thief, male or female [Al-Maidah: 38]

As for the condition that the item must have been stolen from safety before the punishment of cutting can be carried out on the person, the evidence for this could be provided from what Abu Dawud reported from the hadith of Amr ibn Shuaib on the authority of his father, from his grandfather. He said: I heard the

Messenger of Allah ﷺ responding to a man who asked him concerning an animal stolen from pasturage. He ﷺ replied:

فِيهَا ثَمَنُهَا مَرَّتَيْنِ وَضَرْبُ نَكَالٍ وَمَا أُخِذَ مِنْ عَطَنِهِ فَفِيهِ القَطْعُ إِذَا بَلَغَ مَا يُؤْخَذُ مِنْ ذَلِكَ ثَمَنَ المِجَنِّ

The penalty is the payment of twice its cost together with exemplary flogging, however, that which is stolen from its pen involves cutting if the worth is up to the price of a shield — one forth of a dinar —.

The man asked again: O Messenger of Allah, what about the fruits if plucked from a tree.

The Prophet ﷺ replied:

مَنْ أَخَذَ بِفَمِهِ وَلَمْ يَتَّخِذْ خُبْنَةً فَلَيْسَ عَلَيْهِ شَيْءٌ وَمَن احْتَمَلَ فَعَلَيْهِ ثَمَنُهُ مَرَّتَيْنِ وَضَرْبًا وَنَكَالاً وَمَا أَخَذَ مِنْ أَجْرَانِهِ فَفِيهِ القَطْعُ إِذَا بَلَغَ مَا يُؤْخَذُ مِنْ ذَلِكَ ثَمَنَ المِجَنِّ

There is no sin upon whoever consumes it right at the place and does not take it along with him, but for someone who takes it along with him; he should be made to pay twice the cost of what he took and be given an exemplary punishment. However, there is cutting upon whoever takes it from threshing floor, if the worth is up to the cost of a shield.

Ahmad, An-Nasai, Al-Hakim, and At-Tirmidhi also reported the hadith, and it is authenticated by Al-Hakim while At-Tirmidhi rated it sound.

The hadith below also supports this assertion, and it is reported by Ahmad, the collectors of Sunan, Al-Hakim, Ibn Hiban; who as well authenticated it, and Al-Bayhaqi, from the hadith of Raafi bin Kadhij:

لاَ قَطْعَ فِي ثَمَرٍ وَلاَ كَثَرٍ

There is no penalty of cutting in fruits and palm-pith (if stolen from the source).

Many Islamic scholars bear this opinion of considering the state of a stolen property, whether or not it is preserved, before carrying out the cutting punishment, but Ahmad, Ishaq, the Dhahiriyah, and a group from the scholars of hadith has the opinion that it should not be considered. These people give evidence for their opinion even though their position against the said opinion is enough to give it a stand owning to their status.

One of the evidences they give is the hadith of Safwan bin Umayyah ﷺ, reported by Ahmad, Abu Dawud, Ibn Majah, and An-Nasai, Malik in Al-Muwatta, Al-Shafi'i, and Al-Hakim, who authenticated it. He – Safwan – said: I was sleeping in the masjid lying on a shirt of mine while a man came and drew it from; we got hold of him and took him to the Prophet ﷺ. The Prophet ﷺ then ordered that his hand be cut off. I said: O Messenger of Allah, would his hand be cut off for a shirt only bought for thirty dirham, which I can release to him. He ﷺ then said: Why did you not do that before you brought him to me?

They also cited the hadith of Ibn Umar ﷺ that is reported by Ahmad, Abu Dawud, and An-Nasai that the Messenger of Allah ﷺ ordered that the hand of the person who stole a burnoose that cost three dirham from some women shelves be cut. Muslim also reported the like of this hadith. The like of the hadith of Safwan is also reported from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather, but Ibn Hajar mentioned that its chain of transmission is weak.

Moreover, these evidences can be responded to; regarding the hadith of Safwan, it could be said that a masjid is a safe place for whoever enters it. In addition, the safety becomes stronger than that required in the books of Al-Fiqh if the person that enters the masjid has his clothes on him.

However, there is another hadith that can be difficult to explain for the scholars who consider the state of a stolen item; whether it is preserved or not, before the cutting penalty is carried out on a thief. The hadith is the hadith of the cutting of the hand of the person who denied borrowing some items during the time of the Prophet ﷺ. Nevertheless, it is possible that the ruling is peculiar to such cases alone, and in that case, it will not contradict other evidences that indicate the consideration of the state of a stolen property.

As for the assertion that the stolen item must be up to one-fourth of a dinar before the cutting penalty can be carried out, that is because of the hadith of 'A'ishah ﷺ in Sahihayn and some other collections. She said, The Messenger of Allah ﷺ used to cut the hand of a thief for what is up to one-fourth of a dinar and more.

In the narration of Muslim and some other collectors, she ﷺ reported that the Prophet ﷺ said:

لاَ تُقْطَعُ يَدُ السَّارِقِ إِلاَّ فِي رُبْعِ دِينَارٍ فَصَاعِدًا

The hand of a thief should not be cut except for the worth of one-fourth of a dinar and more.

In the narration of Ahmad, it is reported that the Messenger of Allah said:

اقْطَعُوا فِي رُبْعِ دِينَارٍ وَلَا تَقْطَعُوا فِيمَا هُوَ أَدْنَى مِنْ ذَلِكَ

Cut off the hand of a thief for the worth of one-fourth of a dinar, and do not cut it for what is lesser than that.

One-fourth of a dinar at the time was equivalent to three dirham, and a dinar was equivalent to twelve dirham.

In a narration of An-Nasai, it is reported that the Messenger of Allah ﷺ said:

لاَ تُقْطَعُ يَدُ السَّارِقِ فِيمَا دُونَ ثَمَنِ المِجَنِّ

Do not cut off the hand of a thief for what is less than the cost of a shield.

They asked 'A'ishah رضي الله عنها: what is the cost of a shield? She replied: One fourth of a dinar.

There is another narration in Sahihayn and some other collections from the hadith of Ibn Umar رضي الله عنهما where he said: The Prophet ﷺ cut off the hand of a thief for three dirham. Moreover, it has been mentioned earlier in the report of Ahmad that three dirham is equivalent to one-fourth of a dinar.

Al-Shafi'i was reported to have said that one-fourth of a dinar is equivalent to three dirham. That is because during the time of the Messenger of Allah ﷺ twelve dirham was equivalent to a dinar, and that was the conversion that corresponded to a thousand dinar in gold currency being equivalent to twelve thousand dirham in sliver currency for the penalty of blood money.

It is worthy mentioning that the majority of scholars, past and present, bear the opinion that the worth for which a hand is cut is one-fourth of a dinar or three dirham, and among them are the four Imams. However, there are twelve different opinions on this issue, which I have discussed in details in the book Sharhu Al-Muntaqa.

However, as for what is reported in Sahihayn and some other collections from the hadith of Abu Hurairah ﷺ that the Messenger of Allah ﷺ said:

لَعَنَ اللَّهُ السَّارِقَ يَسْرِقُ الْبَيْضَةَ فَتُقْطَعُ يَدُهُ وَيَسْرِقُ الْحَبْلَ فَتُقْطَعُ يَدُهُ

May Allah curse a thief whose hand is cut off only for an egg he stole, and a rope he stole.

Al-Bukhari and some other collectors reported Al-Aamash to have commented regarding this hadith. He said, They used to say that the egg mentioned in this hadith was an iron (gold) egg, so also they regarded the rope as one whose worth is up to three dirham.

As for the fact that it is enough to carry out the cutting penalty with only one self-confession, that is because of what was mentioned in the first section of this chapter concerning that. Moreover, this opinion is supported with the fact that the Prophet ﷺ cut off someone's hand for a shield he stole, so also his cutting of the hand of the person who stole Safwan's shirt. In none of these cases was it reported that the Prophet ﷺ requested those people to reconfirm their confessions.

However, concerning what was reported from the Prophet ﷺ that he said to a thief after confessing he has stolen: Did you steal?, And the man replied in the affirmative twice or three times, it was only to establish his action as explained earlier.

Among the scholars who bear this opinion of the sufficiency of only one self-confession are Malik, the scholars of Al-Shafi'i School of Thought and those of Al-Hanafiyyah School of Thought, but the Itrah, Ibn Abi Laylah, Ahmad, and Ishaq bear the opinion that it must be said twice.

As for the assertion that the witness of two trustworthy witnesses is enough to carry out the punishment of cutting on a thief, that is because the issue of theft is inclusive in the general issues whose evidences from the Qur'an and Sunnah depict that two witnesses are enough to be considered in carrying out their punishments.

As for the fact that it is encouraged to prompt an accused person whom his being guilty is unlikely or doubtful, to protest his innocence, that is because of the hadith of Abu Umamah Al-Makhzuumi, reported by Ahmad, Abu Dawud, and An-Nasai with a chain whose men of its transmission are trustworthy. It is mentioned in the hadith that a thief who has confessed his being guilty of theft was brought to the Prophet ﷺ, but there was no item with me to establish his confession. The Messenger of Allah ﷺ therefore asked him: Did you steal? The man replied in the affirmative twice or three times.

It is mentioned that Ataa said concerning this matter: If a thief was brought to some of the people before us, they would to ask him: Did you steal anything? Say no and he mentioned Abu Bakr and Umar ﷺ as some of those that statement was reported from. This narration is collected by Abdur-Razaq, and there are other narrations from a group of the companions of the Prophet ﷺ regarding this issue.

As for the fact that the spot of cutting should be treated and that it is part of the punishment that the chopped hand is fastened to the neck of the thief, that is because of the hadith collected by Al-Daraqutni, Al-Hakim, and Al-Bayhaqi, and authenticated by Ibn Al-Qattaan, from the hadith of Abu Hurairah ﷺ. He reported that a man who has stolen a cloak was brought to the Messenger of Allah ﷺ, and the people said to him ﷺ: O Messenger of Allah, this man has stolen something. The Messenger of Allah ﷺ said to the man: Did you steal? the man replied: Yes, O messenger of Allah. The Prophet ﷺ then said to people: Go and cut off his hand and get the spot treated, and then bring him back to me. They then cut off his hand and brought him back to the Messenger of Allah ﷺ. He ﷺ said to him: Repent to Allah", the man replied: I have repented to Allah. He ﷺ then prayed for him: May Allah accept your repentance.

Furthermore, the people of As-Sunan reported from the hadith of Fadhalah bin Ubayd, and At-Tirmidhi authenticated it, that a thief was brought to the Messenger of Allah ﷺ and he ordered that his hand be cut off. He ﷺ also commanded that the chopped hand be fastened to his neck.

The chain of the hadith contains Al-Hajaaj bin Artaat. An-Nasai was reported to have commented that he was a weak narrator and that his narration cannot be used to establish any ruling.

As for the assertion that the punishment can be withdrawn with the pardon of the property's owner if the case has not got to the authority, and that it cannot be withdrawn if gets to the authority, that is because of the hadith of Safwan that was cited earlier.

In addition, Abu Dawud, An-Nasai, and Al-Hakim reported from the hadith of Abdullah bin Amr that the Prophet ﷺ said:

تَعَافَوُا الْحُدُودَ فِيمَا بَيْنَكُمْ فَمَا بَلَغَنِي مِنْ حَدٍّ فَقَدْ وَجَبَ

Give pardon regarding the established punishments among you, for whatever comes to me of them becomes imperative to be carried out.

As for the assertion that the cutting penalty for stealing should not be carried out for fruits and palm-pith if stolen, that is because of the hadith of Amr ibn Shuaib and Raafi bin Khadij that were mentioned in the first section of this chapter. However, that the person is compelled to pay twice the cost of what he has stolen is a warning punishment for him. Not only that, but also the Prophet ﷺ stated that he should be given exemplary flogging, such that his penalty could combine money and body punishments.

As for the fact that there is no cutting upon an embezzler, looter, and pilferer, that is because of the hadith of Jabir ﷺ, reported by Ahmad, the collectors of Sunan, Al-Hakim, and Al-Bayhaqi, and authenticated by At-Tirmidhi and Ibn Hiban that the Prophet ﷺ said:

لَيْسَ عَلَى خَائِنٍ وَلَا مُنْتَهِبٍ وَلَا مُخْتَلِسٍ قَطْعٌ

There is cutting upon an embezzler, looter, and pilferer.

Ibn Majah also reported the like of this hadith with an authentic chain of transmission, from the hadith of Abdur-Rahman bin Awf ﷺ. He and At-Tabarani also reported the like of it from the hadith of Anas ﷺ.

As for the statement that cutting is established in the case of the denial of a loan taken, that is because of the hadith reported by Muslim and some other collectors from 'A'ishah ﷺ. She said: A woman from Al-Makhzuumi clan used to deny the loans she took from people, the Prophet ﷺ then ordered that her hand be cut.

Ahmad, An-Nasai, Abu Dawud, and Abu Awwanah, in his authentic collections, reported the like of this hadith of 'A'ishah ﷺ from the hadith of Ibn Umar ﷺ.

The scholars that share the opinion that the state of a stolen property; whether preserved or not, should not be considered are found to have taken to the

opinion of cutting in the case of denial, and some of them are those that were mentioned earlier in the discussion. However, the majority of scholars are of the opinion that the hand should not be cut in the case of denial. They argued that the person who denied loans he took is not a thief and that what is established in the Book of Allah and the Sunnah of his messenger ﷺ is that cutting is for theft offence.

However, this argument could be responded to by saying that if the denial of properties taken by loan is not known to be theft according to the language usage, it is established in the Shari'ah that it has the implication. In addition, according to the order of arrangement, the meaning of words or their implications according to the Shari'ah is placed over their implications or meanings according to the language usage.

Therefore, as long as the hadith is established in the hadith of 'A'ishah and Ibn Umar ﷺ as earlier mentioned, so also, from the hadith of Jabir, Ibn Mas'ud ﷺ and some others, it is imperative that the ruling holds.

However, it is reported in the narration of Ibn Mas'ud ﷺ with Ibn Majah and Al-Hakim; who authenticated it, that it was jewellery the woman stole, not that she denied taking loans. Nevertheless, it is possible that the woman did the two, the stealing and the denial.

باب حَدّ القَذْف

Chapter 27.3 Punishment of Calumny of Illegal Sexual Intercourse



Whoever accuses another person of illegal sexual intercourse, it then becomes imperative that he is flogged with eighty lashes of cane, and this punishment of flogging is carried out on the person with only one confession or the testimony of two trustworthy persons. In addition, if the person does not repent from that sin, his testimony should never be accepted. However, if he comes with four witnesses for his claim, the punishment is withdrawn, so also if the accused confessed that he committed the crime.

Explanation:

I say: The evidence for the establishment of the punishment of calumny of illegal sexual intercourse is the word of Allah, The Most High:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً

And those who accuse chaste women, and do not produce four witnesses, flog them with eighty lashes. [An-Nur: 4]

Moreover, the people of knowledge agree upon this fact. It is mentioned that Malik reported from Abdallah ibn Amir ibn Rabi'ah that he said: I witnessed Umar bin Al-Khattab, Uthman bin Affaan, and the leaders of the Muslims after them, I do not see any of them flogging a slave who committed slander more than forty lashes.

However, they disagree concerning the flogging of a slave who committed this kind of slander, and the disagreement is centred upon whether the punishment of a slave slanderer should be a half of that of a free person or not. The majority of them bear the opinion that the punishment of a slave slanderer should be a half of that of a free person, but Ibn Mas'ud, Umar bin Abdil-Aziz, Az-Zuhri, Al-Awzai, Al-Layth, and Ibn Hazm hold the opinion that his punishment should not be a half of that of a free person. Rather, it should be a fu'l punishment like that of a free person because of the generality of the verse.

As for the fact that the punishment should be carried out with only one confession, that is because one should be held responsible for his self-confession, and whoever says that it must be repeated twice should produce his evidence. Certainly, there is no evidence from the Book of Allah and the Sunnah of His Prophet ﷺ supporting that.

As for the assertion that the testimony of two trustworthy witnesses should be considered in carrying out the punishment, that is because this issue is like other issues the Noble Book spoke about the sufficiency of considering the witnesses of two trustworthy witnesses for.

As for the assertion that the punishment is withdrawn if the accuser produces four witnesses and all of them testify against the accused with respect to the illegal sexual intercourse he/she is accused of, that is because the accuser will no longer be a slanderer. Consequently, the illegal sexual affair has become established upon the accused with the testimony of the four witnesses, thereby the punishment of adultery or fornication would be carried out upon the accused. So also, the punishment is withdrawn if the accused confesses that he actually committed the illicit act. In that vein, he will also be made to face the punishment of the act of adultery or fornication he committed.

It is established that the Messenger of Allah ﷺ flogged the slanders of 'A'ishah ﷺ on adultery, as reported by Ahmad, Abu Dawud, Ibn Majah, and At-Tirmidhi; who as well rated it sound, and Al-Bukhari also mentioned it in his Sahih. With all these, the punishment of calumny of illegal sexual intercourse is established in the Sunnah, as it is established in the Qur'an. In addition, the flogging of a slanderer of people on adultery also occurred in the time of the companions when Al-Mugirah was accused of adultery and there were not enough witnesses to establish it. The case is a known and established one.

بَاب حَدّ الشُّرْبِ

Chapter 27.4 The Punishment for Consumption of Alcohol



Anyone who is considered responsible religiously and drinks any alcoholic drinks, at will, should be flogged by the authority with a number of lashes he finds suitable, it could be forty, less, or more than. The beating can be carried out with anything, even as little as beating with foot wears. It is enough to carry out the punishment that the person testifies against himself only once, or with the testimony of two trustworthy witnesses, even if it is based on the person's vomit only. And that the drunkard be killed at the fourth time of establishing the crime on him is abrogated.

Exemplary punishments for the offences that their punishments are not specified under the Shari'ah are conducted with imprisonment, flogging, or the likes, and the flogging should not be more than ten lashes of cane.

Explanation:

I say: As for the condition of being responsible religiously and that, the drinking should be at will, the evidences for it have been discussed earlier in the work.

As for the fact that the number of lashes for alcohol drinking is as thought suitable by the authority, that is because of what is established in Sahihayn from the hadith of Anas ﷺ. He reported that the Prophet ﷺ ordered flogging for alcohol drinking, and it was done with palm branches stripped of leaves and foot wears, and Abu Bakr ﷺ also ordered for flogging of a drunkard and people flogged him with forty lashes.

In the report of Muslim, also from the hadith of Anas ﷺ, he mentioned that a drunkard was brought to the Prophet ﷺ and he ﷺ ordered that he should be flogged, he was then given about forty lashes with two palm branches. He added: Abu Bakr ﷺ did the same during his time, but when it was the era of Umar ﷺ he sought the opinions of the companions of the Prophet ﷺ and Abdur-Rahman ﷺ suggested eighty lashes that was the minimum specified punishment in the Sharah, Umar then commended that to be the punishment.

There is another hadith concerning this issue from the hadith of Uqbah bin Al-Harith ﷺ in the Bukhari and some other collections. He ﷺ reported that An-Nuaman or Ibn Nuamaan was brought to the Messenger of Allah ﷺ

drunk, the Prophet ﷺ then ordered the people present therein to beat him, and I was one of the people who beat him. He was beaten with palm branches and foot wears.

The hadith of As-Sahib bin Yazid ﷺ in the Bukhari also mentions this. He said: We used to bring forth the drunkards for punishment during the time of the Messenger of Allah ﷺ, the era of Abu Bakr ﷺ, and at the beginning of the reins of Umar ﷺ and we would conduct the punishment on them only with hand beating, and beating with shoes and garments. Until it was a time during the reins of Umar, he flogged a drunkard with forty lashes; and when people became wild in the act and immorality became opened, he then flogged with eighty lashes. Al-Bukhari also reported the like of the hadith from the hadith of Abu Hurairah ﷺ.

There are other Ahadith under this section. Moreover, a critical look at all of them depicts that the Shari'ah does not give any specific number of lashes for alcohol drinking and that the flogging of a drunkard used to be conducted in the presence of the Messenger of Allah ﷺ in various ways as demanded by the condition. It is reported in Sahihayn that Ali ﷺ said: I do not fear that I conduct punishment on anyone and he dies in the course, except a drunkard. That is because if he dies in the course of carrying out the punishment on him I will have to pay blood money for killing him, and that is because the Messenger of Allah ﷺ did not command that.

As for the fact that only one self-confession or the testimony of two trustworthy witnesses is enough to conduct the punishment on a drunkard, that is because of what had been earlier mentioned regarding that, and because there is no evidence that stipulates that the confession should be repeated.

As for the fact that the testimony of the witnesses can be based on the vomit of a drunkard, that is because vomiting alcohol definitely indicates that the person drank it, so also because basically not making such vomiting is what is normal. That is why the companions of the Prophet ﷺ conducted punishment on Al-Walid bin Uqbah when two men testified that he drank alcohol; one of them mentioned that he saw him drinking it, while the other maintained that he saw him vomiting it. Uthman then said: He would not have vomited it except that he drank it, as it is reported in Muslim and some other collections.

As for the assertion that the order of killing a drunkard at the fourth time of establishing the crime of drinking on him is abrogated, that is because of what At-Tirmidhi reported from the hadith of Jabir ﷺ that the Prophet ﷺ said:

إِنَّ مَنْ شَرِبَ الخَمْرَ فَاجْلِدُوهُ فَإِنْ عَادَ فِي الرَّابِعَةِ فَاقْتُلُوهُ

Whoever drinks alcohol, flog him, but he returns to it the fourth time, kill him.

Jabir then said: They then brought a man to the Prophet ﷺ who has drunk for the fourth time and he ﷺ did not kill him, he only beat him.

Abu Dawud and At-Tirmidhi also reported the hadith from the hadith of Qabisah bin Dhuayb, and it has the addition: they then brought such a person, that is; someone who has drunk for the fourth time, to the Messenger of Allah ﷺ and he only beat him, and so, the order of killing was lifted.

In another narration of Ahmad from the hadith of Abu Hurairah ﷺ it has it that a drunkard who has drunk for the fourth time was brought to the messenger of Allah ﷺ and was left alone.

As for the permissibility of conducting exemplary flogging for the crimes whose punishments are not specified and the fact that it must not be more than ten lashes, that is because of the hadith of Abu Burdah, Ibn Niyaar ﷺ in Sahihayn and some other collections. He ﷺ reported that he heard the Messenger of Allah ﷺ saying:

لاَ يُجْلَدُ أَحَدٌ فَوْقَ عَشَرَةِ أَسْوَاطٍ إِلاَّ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ

No one should be given more than ten lashes of cane, except the punishment is a specified one from those ordained by Allah.

Ahmad, Abu Dawud, An-Nasai, and At-Tirmidhi also reported a hadith relating to this issue; At-Tirmidhi rated it sound, while Al-Hakim mentioned that its chain of transmission is authentic, from the hadith of Bahz bin Hakim. He – mentioned that the Prophet ﷺ imprisoned a man for an accusation against him, and he later released him.

Al-Hakim also reported a supportive hadith from the hadith of Abu Hurairah ﷺ that the Prophet ﷺ imprisoned a man for a day and night.

It is also established that Umar commanded Abu Ubaydah bin Al-Jaraah ﷺ to tie up Khalid bin Al-Walid with his turban when he withdrew him from

leadership of the Muslim army, as reported in the history books. And the reason for that was that Khalid condemned that he gave out some money from the Muslims purse. In addition, the issue of exemplary punishment has been mentioned earlier in the discussion regarding stealing; that also establishes the punishment.

باب حدّ المُحَارِب

Chapter 27.5 The Punishment for Spreading Evil on Land

The Punishment for perpetrating evil on land may be one of the various kinds mentioned in the Qur'an. The form of punishment could be in the form of killing, crucifixion, cutting of hands and legs from opposite sides, or sending into exile. The authority will choose anyone of the punishments found suitable for any bandit at any time. This punishment could be conducted in the cities and in the villages, as long as the bandit has perpetrated evils or caused mischief on the land. However, the punishment is lifted if any bandit repents before he is been caught.

Explanation:

I say: The ruling mentioned above is what is conspicuous from what is mentioned in the Glorious Book concerning the matter of evil perpetration or mischief on land, disregarding the opinions that are formed on it by the various Schools of Thought. Allah, The Most Glorified, says:

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ

The recompense of those who wage war against Allah and His Messenger and do mischief on land is that they shall be killed, or crucified, or their hands and feet be cut off from opposite sides, or be exiled from the land. [Al-Maidah: 33]

In this verse, those who wage war against Allah and His Messenger ﷺ are related to those who do mischief on land. This implies that the punishment of whoever wages war against Allah and His Messenger ﷺ by a way of perpetrating evils on land or doing mischief is what is mentioned in the verse.

So also because the verse was revealed in respect of some evil perpetrators – the Uraaniyyun – it is therefore paramount that the ruling in it includes everyone who falls into the act.

The verse mentions their recompense:

أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ

…is that they shall be killed, or crucified, or their hands and feet be cut off from opposite sides, or be exiled from the land.

It mentions different choices, which then gives the Imam or anyone in the position of authority the opportunity of choosing any one he finds suitable at any time. In addition, this explanation of the choices from the verse is what is evident from the pattern of the Qur'anic arrangement, and this will continue to be as long as there is nothing from the Sunnah of the Prophet ﷺ that gives any contradictory explanation to what this Arabic pattern supposes.

However, as for what Al-Shafi'i reported in his Musnad from Ibn Abbas ﷺ that he said concerning the bandits -: If they killed people and took away properties, and are caught, they should be killed and thereafter be crucified, but if they only killed people and did not collect property, they should only be killed and not crucified. However, if they only took property and did not kill anyone, their hands and legs should be cut off from opposite sides, but if they caused fear for people on their ways and neither killed nor collected property, they should be sent into exile.

This independent opinion of Ibn Abbas ﷺ is never a proof against anyone who may hold a contrary opinion. This is because even if it is agreed that the statement is the explanation of the verse, though it cannot be because it contradicts the conspicuous meaning of the verse, it cannot still be evidence against anyone because there is Ibn Abi Yahya in its chain of transmission. This Ibn Abi Yahya is a very weak narrator, and his narration can never be taken as a proof.

As for what is reported from Ibn Abbas ﷺ also that the verse was revealed in respect of the idol worshippers, as it is collected by Abu Dawud and An-Nasai, that is refuted with the fact that the verse was revealed in respect of the Uraaniyyun. In addition, it is reported in the books of hadith that this people accepted Islam in the first instance.

Furthermore, even if it is supposed that what is reported from Ibn Abbas ﷺ that the verse was revealed in respect of the idol worshippers is correct, it cannot as well be a proof for the people who opine that the ruling of the verse is limited to idol worshippers. That is because of the established rule that the consideration concerning the implication of a text of either the Qur'an or

Sunnah is general; it is not limited to the reason for which it is mentioned only. Moreover, all these explanations are necessary disregarding the fact that the chain of transmission of the narration is weak, otherwise; it is enough to say that it contains Ali bin Al-Husayn bin Waqid, who is a weak narrator.

The opinion we tried to establish here is the opinion of a number of the pious predecessors, the like of Al-Hasan Al-Basri, Ibn Al-Musayyib, and Mujahid. More so, who is considered right in matters upon which people differ is someone who holds his evidence from the Book of Allah. And it is established from the Messenger of Allah ﷺ that he carried out on people of Uraynah one of the kinds mentioned in the verse, and that is cutting off of their hands and legs, as reported in Sahihayn and some other collections from the hadith of Anas ﷺ.

However, the crucifixion mentioned in the verse refers to fastening the person to a trunk until he dies, if the Imam finds that suitable for him. He can as well crucify in a way that the person will not die, if he wishes. That is because the word crucifixion takes its effect whether it leads to death or not. And if it is said that the crucifixion mentioned in the verse only refers to the one that leads to death, it does not still imply that it is a repetition to the act of killing mentioned before it because crucifixion is a special way of killing.

As for sending the person to an exile, that is sending him away from the land where he perpetrated evil. It is also said that it only refers to imprisonment, and that the difference in the explanation of that part is in accordance to the difference in the Arabic usage.

As for the fact that the punishment is lifted from him if he repents before been caught, that is mentioned in the Qur'an straight forward.

بَاب مَن يَستَحِقُّ القَتْلَ حَدًّا

Chapter 27.6 Those Whose Killing is Permissible

A war-like or belligerent non-Muslim, an apostate, a magician, a soothsayer, someone who abuses Allah, His Messenger, Islam, or As-Sunnah, someone who ridicules or mocks the religion, an infidel after been asked to repent, an adulterer, a homosexual, and a bandit.

Explanation:

I say: As for the permissibility of killing a war-like, there is no difference of opinion about that among the scholars, and that is because of the order of Allah in several places in His Book to kill the unbelievers. So also, because it is established in the narrations successively reported from the Sunnah of the messenger of Allah ﷺ that he waged wars against the unbelievers. In addition, because he ﷺ used to give the unbelievers in their lands the opportunity to make a choice from three things when he called them to Islam, and would thereafter fight them if they chose to fight.

As for the permissibility of killing an apostate, that is because of the statement of the messenger of Allah ﷺ.

مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ

Whosoever apostates from his religion, kill him.

It is reported by Al-Bukhari and some the collectors from the hadith of Ibn Abbas ﷺ.

Also because of the hadith:

لاَ يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إِلاَّ بِإِحْدَى ثَلاَثٍ كُفْرٌ بَعْدَ إِسْلاَمٍ

It is not permissible that a Muslim is killed except for one of the three: apostasy after Islam.

This hadith is in Sahihayn and some other collections from the hadith of Ibn Mas'ud ﷺ.

So also because of the hadith of Abu Musa ﷺ also reported in Sahihayn that the Prophet ﷺ said to him: Go to Yemen..., and later sent Muadh bin Jabal to join him there. When Muadh got to him, Abu Musa spread a mat for him and said, Get down. But there was a man with Abu Musa tied down, Muadh asked: Who is this? Abu Musa replied: He was a Jew but accepted Islam, and later returned to Judaism. Muadh then said, I will not sit until he is killed; that is the judgment of Allah and His Messenger ﷺ.

As for the permissibility of killing a magician, that is because magic is a form of disbelief. Therefore, whoever engages in magic is an apostate, and he is worthy of been killed.

In addition, At-Tirmidhi, Al-Daraqutni, Al-Bayhaqi, and Al-Hakim reported from the hadith of Jundub ﷺ that the Messenger of Allah ﷺ said: The punishment of a magician is killing.

At-Tirmidhi then commented, The truth about this narration is that it is the statement of Jundub. He also said, However, that is the correct opinion that is practiced by some of the pious predecessors among the companions of the Prophet ﷺ and other than them. That is the opinion of Malik bin Anas, but Al-Shafi'i maintained that a magician should be killed only if his magic is a kind that can lead to disbelief, but if it is a kind that cannot lead to disbelief, he should not be killed.

The chain of transmission of the hadith contains Ismail bin Muslim Al-Maki, who is weak.

Ahmad, Abdur-Razaq, and Al-Bayhaqi reported that Umar bin Al-Khattab wrote a letter a month before his death, and the letter contained: Kill the entire male and female magicians.

However, the most correct opinion about this issue is the opinion of Al-Shafi'i because a magician is killed for his disbelief (apostasy), it is then necessary that his magic be a kind that leads to disbelief.

As for the permissibility of killing a soothsayer, that is because soothsaying is a kind of disbelief, definitely a soothsayer would do act of disbelief in his work. In addition, it has been reported from the Messenger of Allah ﷺ that believing in the statement of a soothsayer is an act of disbelief, it is more deserving therefore, that a soothsayer who believes in his work is a disbeliever.

Among these narrations is the hadith of Abu Hurairah ﷺ that is reported by Muslim and some other collectors that the Prophet ﷺ said:

مَنْ أَتَى كَاهِنًا أَوْ عَرَّافًا فَصَدَّقَه بِمَا يَقُولُ فَقَدْ كَفَرَ بِمَا أُنْزِلَ عَلَى مُحَمَّدٍ صَلَّى اللَّهُ عَلَيهِ وَسَلَّمَ

Whoever goes to a soothsayer or fortune-teller and believes in what he says has indeed disbelieved in what is revealed unto Muhammad ﷺ.

There are other narrations under this section.

As for someone who abuses Allah, His Messenger, Islam, the Book of Allah, the Sunnah of the Messenger ﷺ, or mocks the religion, that is because all these acts lead to plain disbelief and anyone who practices any of them is an apostate, who then deserves to be given the same punishment.

Abu Dawud has reported from the hadith of Ali ﷺ that a Jewish woman used to outrageously abuse the Messenger of Allah ﷺ, a man then strangulated her until she died and the Prophet ﷺ saw that she deserved to be killed.

However, this narration is a narration of Ash-Shabi from Ali ﷺ and it has been said that Ash-Shabi did not hear any narration from Ali ﷺ.

Abu Dawud and An-Nasai also reported from the hadith of Ibn Abbas ﷺ that there was a blind man who has a slave wife during the time of the Messenger of Allah ﷺ, and the woman used to abuse the Messenger of Allah ﷺ. The man then killed her after several warnings, and the Prophet ﷺ judged that her killing was lawful. The men of the chain of its transmission are trustworthy.

Abu Dawud and An-Nasai also reported another hadith related to this issue from the hadith of Abu Barzah. He said: I was with Abu Bakr in a sitting when he got angry with a man, he continued to scold him until I said: O the successor of the Messenger of Allah, permit me to behead him. He added: My word took away his anger; he then stood up and entered his house. He later sent for me and said: what did you say the other time? I replied: I asked you to give me permission to behead him. He then asked me: Had I permitted you, would you have beheaded him? I replied in affirmative. He then said: Would you have done that truly? No one has that right after the Messenger of Allah ﷺ.

In addition, Ibn Al-Mundhir ﷺ reported consensus of the scholars over the fact that whoever abuses the Messenger of Allah ﷺ should be killed. Also, Abu Bakr Al-Farisi, one of the scholars of Al-Shafi'iyah, also mentioned in the book Al-Ijmaa that the consensus of the scholars agreed that whoever abused

the Messenger of Allah ﷺ has disbelieved, and his repentance, thereafter, if he does, cannot avail him of killing. That is because the penalty of abusing him ﷺ is killing, and it is known that the repentance does not erase punishment.

However, Al-Qafaal disagreed with that opinion, he said: The person has disbelieved for abusing the Messenger of Allah ﷺ but his Islam would avail him of the killing. Nevertheless, Al-Khatabi said concerning the issue: I do not know any difference of opinion among the scholars regarding the obligation of killing the person if he was a Muslim.

Consequently, if what is said about abusing the Messenger of Allah ﷺ is as established, it is then paramount that anyone who abuses Allah, The Most High and The Most Dignified, His Book, His religion, or mocks His religion be a disbeliever, and this fact does not require any proof to establish it.

As for the permissibility of killing an infidel, that is because he is someone who displays Islam outwardly but conceals disbelief, and he does not believe in the Islamic concepts. Such person is not but a disbeliever in Allah and His religion; he is an apostate. Moreover, this kind of apostasy is the worst of all. Anytime that appears from anyone, from either his statement or deeds, he is no more a Muslim.

However, scholars disagree about whether his repentance should be accepted or not, and the correct opinion is that it should be accepted.

As for demanding from these people to repent before resorting to killing them, that is because of the hadith of Jabir ﷺ that is reported by Al-Daraqutni and Al-Bayhaqi that a woman who used to be called Ummu Marwan renounced Islam and the Prophet ﷺ commanded that they should present Islam to her again. And that if she accepted Islam, she should be pardoned, otherwise, she should be killed.

The hadith has two chains of transmission, but Ibn Hajar ruled that both are weak.

Al-Bayahqi also reported a related hadith with another weak chain of transmission, from the hadith of 'A'ishah ﷺ that a woman renounced Islam the day of Uhud, the Prophet ﷺ then ordered that she should be asked to repent, and if she did not, she should be killed.

Abu Shaykh also reported in the book Kitab Al-Huduud from Jabir ﷺ that the Prophet ﷺ demanded from a man to repent four times. The chain of transmission of this hadith contains Al-Alaa bin Hilaal, who is an abandoned narrator. Al-Bayhaqi also reported the like of the hadith with another chain of transmission.

Also, Al-Daraqutni and Al-Bayhaqi reported that Abu Bakr demanded from a woman who used to be called Ummu Qarfah, who renounced Islam, to repent, she refused to repent and was killed.

Ibn Hajar commented over this hadith thus: it is reported from the book As-Siyar that the Prophet ﷺ killed a woman whose name was Ummu Qarfah on the day of Quraydha, and she wasn't the one mentioned here.

Malik also reported in Al-Muwatta, so also Al-Shafi'i that a man came to Umar from Abu Musa ﷺ, Umar asked him about the people and the states of things with them. He then asked the man: Is there any news from that your far place? The man replied: Yes, a man disbelieved after his Islam. He asked further: And what did you do with him? The man replied: We killed him. Umar then said: Why did you not keep him for three days and be feeding him with a loaf of bread every day and then demanded him to repent, perhaps he might repent and had a rethought about Allah. O Allah! Bear me witness that I was not there and I was not pleased with it when I was informed.

Nevertheless, scholars have differed about whether it is compulsory to demand from these people to repent before killing them or not, so also the way of demanding that from them, but what is apparent is that it is compulsory that they are called back to Islam before killing them. Like the Messenger of Allah - used to call the idol worshippers to Islam, and would command his army to call them to three things, and they would not fight them until they made the call. That is established and it should be done for every unbeliever.

In that vein, it should be said to an apostate for instance: return to Islam, otherwise, we will kill you. And to a magician, or a soothsayer, or someone who abuses Allah, His messenger, Islam, the Book or the Sunnah, or someone who mocks the religion, or an infidel: you have disbelieved after your Islam, you either return to Islam, otherwise, we will kill you.

This is the way of requesting them to repent, and it is compulsory, as it is compulsory that a war-like is called into Islam before being fought.

But as for the saying that an apostate should be demanded twice or three times to repent, or that it should be said to him after three days imprisonment, or less or more days, there is no proof to support this claim. Rather, it should be said to them: return to Islam, and if he rejects, he is killed right there.

As for an adulterer, homosexual, or bandit, that has been discussed earlier.

28 كتاب القِصَاص
Book of the Law of Vengeance

It is compulsory upon a murderer who is considered responsible religiously to accept to be killed if the heirs of the murdered chose to do that, but if they do not choose that, they then have the right to take blood money against the killing. A woman is killed for a man and vice versa, but killing of a slave for a free person, an unbeliever for a believer, and a child for his parent is not vice versa. The law of vengeance also holds for parts of the body, so also for wounds and injuries. The killing in vengeance is withdrawn with the pardon of only one of the heirs, while other members must accept taking blood money instead, and they must be duly given their share. In the case of killing, if there is a little child among the heirs, others must await his maturity before they take decision. Vengeance is not allowed for the harms caused by a victim of a transgression while rescuing or protecting himself. If someone is held for another person to kill him, the killer is killed, while the one who held the person is jailed. For non-deliberate killing — killing by mistake, it only involves blood money and making expiation, and what is regarded as killing by mistake is the killing that is evidently not intentional, or the killing by someone bellow legal age, or the killing of an insane person. In this case, the family takes care of the responsibility.

Explanation:

I say: As for the obligation of killing in vengeance, that is because of the word of Allah in the Gracious Book:

كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى

Vengeance is prescribed for you in murder cases [Al-Baqarah: 178]

So also is word:

وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ

And there is a (saving) of life for you in the law of vengeance [Al-Baqarah: 179]

The obligation is also established by the Sunnah – of the Prophet ﷺ, which has been reported successively from him ﷺ, among them is like the hadith:

لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إِلَّا بِإِحْدَى ثَلَاثٍ مِنْهَا النَّفسُ بالنَّفسِ...

It is not permissible to kill a Muslim except for one of these three reasons, killing of vengeance…

This hadith is recorded in Sahihayn and some other collections from the hadith of Ibn Mas'ud ﷺ and in Muslim and some other collections from the hadith of 'A'ishah ﷺ.

It is also reported in Sahihayn and some other collections from the hadith of Abu Hurairah ﷺ that the Prophet ﷺ said:

مَنْ قُتِلَ لَه قَتِيْلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ إِمَّا أَن يُفْدَى و إِمَّا أَن يُقْتَلَ

Whosoever his relative is killed has the right to choose any of these two views he wishes, he can choose to take blood money or take a revenge.

Ahmad, Abu Dawud, and Ibn Majah also reported another related hadith from the hadith of Abu Shurayh Al-Khuzaai ﷺ. He reported that he heard the Messenger of Allah ﷺ saying: Whosoever his relative is killed or injured has the opportunity to make a choice out of any of these three, he can choose to take revenge, or take blood money, or forgive. If he requests for anything outside these things, he should be then be prevented.

The chain of transmission of this hadith contains Sufyan bin Abi al-Awjaah As-Sulami, whom there is an ill statement about. It also contains Muhammad bin

Ishaaq, who is deceitful in narration and has reported the hadith in a deceptive way.

Al-Bukhari and some other collectors reported that Ibn Abbas ﴿رضي الله عنهما﴾ said: The law of vengeance in killing was ordained upon the children of Israel and the opportunity of giving blood money to avert the killing was not given to them. However, Allah said to this nation: The law of vengeance is prescribed for you in murder cases, a free person for a free person..., but He, The Most High, added: ... and whoever (killer) is forgiven by the brother (the relatives) of the killed..., and the forgiveness is to accept blood money in deliberate killing. In addition, Allah ordered in the same verse that that ruling of forgiveness should be complied with. It is also mentioned in the verse that the forgiveness should be done with kindness, which is the order to the relatives of the killed to request for blood money with kindness, and the killer to pay it with kindness. And that is alleviation and mercy from your Lord as against what was ordained upon those before you.

However, there is no difference of opinion among the scholars concerning the obligation of taking vengeance by killing when necessary.

As for the consideration of being responsible religiously and doing it at will, that has been mentioned earlier in other discussions.

As for the condition of doing the killing intentionally, that is because of what Abu Dawud, An-Nasai, and Al-Hakim reported from 'A'ishah ﴿رضي الله عنها﴾, and Al-Hakim authenticated it, with the wording:

لَا يَحِلُّ قَتْلُ مُسْلِمٍ إِلَّا فِي إِحْدَى ثَلَاثِ خِصَالٍ : زَانٍ مُحْصَنٌ فَيُرْجَمُ ، وَرَجُلٌ يَقْتُلُ مُسْلِمًا مُتَعَمِّدًا ، وَرَجُلٌ يَخْرُجُ مِنَ الإِسْلَامِ ، فَيُحَارِبُ اللَّهَ وَرَسُولَه فَيُقْتَلُ ، أَوْ يُصْلَبُ ، أَوْ يُنْفَى مِنَ الأَرْضِ

It is not permissible that a Muslim is killed except for any of these three practices, a married person who is thrown to death for committing adultery, or someone who is killed for deliberately killing another person, or someone who renounced Islam and began to wage war against Allah and His Messenger, who is either killed, crucified, sent to exile.

At-Tirmidhi and Ibn Majh reported from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather, with the wording:

مَنْ قَتَلَ مُؤْمِنًا مُتَعَمِّدًا دُفِعَ إِلَى أَوْلِيَاءِ الْمَقْتُولِ، فَإِنْ شَاءُوا قَتَلُوا...

Whosoever deliberately kills a believer should be rendered to the family of the killed, if they wish, they can kill him...

What is generally known from the available evidences and the consensus of the people of knowledge is that vengeance by killing is not compulsory except in deliberate killing, as that will not happen except with enmity. In addition, it is only established in the Shari'ah that whoever kills deliberately should be killed, therefore, it is not compulsory that someone who killed mistakenly should be killed.

As for the assertion that vengeance by killing is not compulsory except the heirs of the killed demands for it, otherwise, they will only request for blood money, that is because of the word of the messenger of Allah earlier mentioned:

وَمَنْ قُتِلَ لَه قَتِيْلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ إِمَّا يُودَى وإِمَّا يُقَادُ

Whosoever his relative is killed, he has the right to choose any of these two views he wishes, he can choose to take blood money or a revenge.

As for the assertion that a woman is killed for a man and vice versa, that is because of the hadith reported by Malik and Al-Shafi'i from the hadith of Amrr bin Hazm that the Prophet ﷺ wrote to the people of Yemen that men should be killed for women.

Abu Dawud and An-Nasai also reported it with a chain of transmission containing Ibn Wahab reporting from Yuunus, Yuunus reporting from Az-Zuhri, and Az-Zuhri reporting it in a way not linkable to the Messenger of Allah ﷺ. However, An-Nasai, Ibn Hiban, Al-Hakim, and Al-Bayhaqi reported it lengthier than that and with a chain of transmission linkable to the Messenger of Allah ﷺ from the hadith of a Az-Zuhri, reporting from Abu Bakr bin Muhammad bin 'Amrr bin Hazm, on the authority of his father, and from his grandfather.

There are many comments concerning the hadith, but Ibn Hiban, Al-Hakim, and Al-Bayhaqi authenticated it.

Ibn Abdil-Bar, in his comment, said: The matter of that letter of the Messenger of Allah ﷺ is famous among the scholars of history, and what it contained is also known among the people of knowledge. Therefore, to confirm its authenticity does not require establishing the authenticity of its chain of transmission; rather its popularity suffices for that. That is because it has been passed in successions by scholars from generation to generation so that people can be aware of it and accept it.

Yaquub bin Sufyan, in his own comment, said: I do not know any book of collection as authentic as this collection of Amrr bin Hazm, that is because the companions of the Messenger of Allah ﷺ and the Taabiuun (those who came after them) used to refer to it and drop their independent opinions for it.

Al-Hakim also said: Umar bin Abdil-Aziz and the Imam of his time, Az-Zuhri bore witness to the authenticity of that collection.

Among the evidences provided for this opinion is the hadith of Anas ﷺ reported in Sahihyan and some other collections that a Jewish man crushed the head of a young girl between two stones. They then asked the girl before she died: Who did this to you? Is it so and so? Is it so and so? She was responding in the negative to all of that until they mentioned the Jewish man, she then responded in affirmative with her head. The Jewish man was brought to Messenger of Allah ﷺ and he confessed that he did it. He ﷺ then commanded that his head be crushed between two stones as well.

I have explained this hadith extensively in the book Sharhu Al-Muntaqa, and the opinion that is suggested from the hadith is the opinion of the majority of scholars. However, they disagree regarding blood money, would the heirs of a man who is killed by a woman (and who is to be killed had they requested for vengeance by killing) take half of the blood money that is meant for a woman, or full, which is the blood money for a man, from the woman's heirs?

Nevertheless, Ibn Al-Mundhir has reported consensus of the scholars about killing a man for a woman, except a report from Ali, Al-Hasan, and Attaa. Al-Bukhari also reported the opinion as the opinion of the people of knowledge.

That is about killing a man for a woman, as for killing a woman for a man, that is very clear. So also, killing a slave for a free person and killing an unbeliever for a believer, as well as killing a child for any of his parents. There is no difference of opinion about all these, except that there is a great difference about the opposite cases of all the last three instances.

Some bear the opinion that a free man should be killed for a slave; that is reported as the opinion of Abu Hanifah, Saeed bin Musayyib, Ash-Shabi, An-Naqi, Qatadah and Ath-Thawri. However, this opinion holds when the slave is killed not by his master, but if his master kills him, the matter is different.

The author of Al-Bahr reported the consensus of scholars concerning the fact that a master should not be killed for his slave, and no one contradicts this agreement except what is reported from An-Naqi that a master should be killed for his slave. At-Tirmidhi also reported this difference from An-Naqi and some of the people of the generation that came after the companions of the of the Prophet ﷺ.

These people made evidence with the hadith reported by Ahmad and the collectors of Sunan, which At-Tirmidhi claimed to be a sound hadith, from the report of Al-Hasan from Samrah ﷺ. He reported that the Messenger of Allah ﷺ said: Whoever kills his slave, we shall kill him back, and whoever lops off his slave, we shall also lop him off. However, the chain of transmission of this hadith is weak, it is a report of Al-Hasan from Samrah, and there is a difference of opinion among scholars about whether or not Al-Hasan heard narration from Samrah.

Moreover, those who opine that a master should not be killed for his slave made evidence with this word of Allah:

الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ

The free for the free.

However, there is a lapse in using this verse as evidence for this opinion just as it is in using the verse: Life for life as evidence by the other group of scholars for the permissibility of killing a master for his slave.

They also made evidence with the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather, that a man deliberately killed his slave during the time of the Messenger of Allah ﷺ. He ﷺ ordered that he should be flogged; he was also sent into a year exile and his portion of the general shares of the Muslims was taken from him. The man was not killed for his slave, rather; he was asked to free a slave.

The chain of transmission of that hadith contains Ismaail bin Ayaash, who is weak. However, he reported it from Al-Awzaai, who his from Ash-Shaam, and he reports from the people of Ash-Shaam are acceptable. However, the chain also contains Muhammad bin Abdil-Aziz Ash-Shami, who is also weak.

Nevertheless, Al-Bayhaqi and Ibn Adyy reported another hadith supporting this opinion from the hadith of Umar ﷺ that the Messenger of Allah ﷺ said: Vengeance is not taken for a slave from his master, so also from a father

for his child. But the chain also contains Umar bin Isa Al-Aslami, whose hadith is never acceptable, as Al-Bukhari mentioned about him.

Al-Daraqutni and Al-Bayhaqi reported another hadith from the hadith of Ibn Abbas ﷺ that the Messenger of Allah ﷺ said: A free person is not killed for a slave. But, its chain of transmission contains Juwaybir and some others, who are all rejected narrators.

It is also reported that Ali ﷺ said: It is from As-Sunnah that a master is not killed for his slave However, the chain of this narration also contains Jabir Al-Jufi, who is a rejected narrator.

Al-Bayhaqi also reported from the hadith of Ali ﷺ the like of the hadith of Amr ibn Shuaib. There are other narrations under this section, which can support one another, and that will establish this opinion of not killing a free person for a slave.

As for the assertion that a Muslim is not killed for a non-Muslim, that because of the hadith of Ali ﷺ that the Prophet ﷺ said:

لَا يُقْتَلُ مُسْلِمٌ بِكَافِرٍ

A Muslim should not be killed for a non-Muslim.

Ahmad, An-Nasai, Abu Dawud and Al-Hakim reported it, and Al-Hakim authenticated it. Also, Ahmad, Ibn Majah, and At-Tirmidhi reported a related hadith from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather. Ibn Hiban also reported the hadith in his Sahih from the hadith of Ibn Umar ﷺ. Al-Bukahri and some other collectors also reported from the hadith of Ali ﷺ that Abu Juhayfah asked him: Is there anything with you (the relatives of the messenger of Allah ﷺ) from the revelation that is not in Qur'an? He replied: By Allah, Who splits the seed-grain (in the soil for germination) and creates man, there is nothing peculiar to us, except the understanding of Qur'an Allah gives whoever He wishes and what is there in this paper. I asked him: What is that in the paper? He replied: Believers have equal rights to their bloods, freedom should be given to the slaves, and a Muslim should not be killed for a non-Muslim.

The people of knowledge generally agree that a Muslim should not be killed for a war-like non-Muslim, however, they disagree over a free non-Muslim under an Islamic governance; should a Muslim be killed for him or not? The majority of scholars bear the opinion that a Muslim should not be killed for him, while

some scholars bear a contrary view, but these people never come with any convincing evidence.

As for the prohibition of killing a parent for his child, that is because of the hadith:

لَا يُقْتَلُ الوَالِدُ بِالوَلَدِ

A parent should not be killed for his child

It is reported by At-Tirmidhi from the hadith of Umar ﷺ, but the chain of its transmission contains Al-Hajaaj bin Artaat, who is a weak narrator. However, the hadith has some other chains of transmission with Ahmad, Al-Bayhaqi, and Al-Daraqutni, and the men of their transmissions are trustworthy narrators. At-Tirmidhi also reported the like of it from the hadith of Suraaqah, but its chain of transmission is weak as well. He also reported it from the hadith of Ibn Abbas. Consequently, the people of knowledge have agreed upon that, no one disagrees with that general agreement except al-Buttee, and it is mentioned as one of the opinions of Malik over the issue as well.

As for the assertion that there is vengeance to the damages done to parts of the body, as well as injures or wounds caused to people, when possible, that is because of word of Allah:

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ

And We ordained therein for them: Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds with equality.

Though this verse is a report about the children of Israel, the Prophet ﷺ established it as a rule, as it is reported in Sahihayn and some other collections from the hadith of Anas ﷺ. He reported that Ar-Rubayya break a young woman's incisor and the Messenger of Allah ﷺ commanded that vengeance is taken.

As for the condition that vengeance in wounds and injuries is taken only if possible, that is because it is difficult to take the vengeance of some wounds. For instance, it may be difficult sometimes to cause the same harm caused to the

injured person to the one who injured him, and the condition of possibility of not exceeding the level of the harm caused to the victim is involved in the order given by the Shari'ah concerning taking vengeance. Therefore, if vengeance is not possible except the harm will be more than the one caused to the victim or the result will cause further harms or damages, it is then not permissible, because the evidences that prohibit causing harms to a Muslim or killing him unlawfully will supersede or be placed over the evidences of taking vengeance.

As for the assertion that vengeance of killing will be withdrawn for the killer if one of the rightful heirs expresses his pardon, while others are duly given their shares of the blood money, that is because of what was mentioned earlier that the case of vengeance is left for the heirs of the victim. This, however, gives them the opportunity to choose between taking blood money and requesting for killing the killer. Therefore, if they express their pardon, or anyone of them does, the punishment is withdrawn, because the killing cannot be done partly. It is then left for them to take their shares of the blood money.

Abu Dawood and An-Nasai reported from the hadith of 'A'ishah ﴿رضي الله عنها﴾ that the messenger of Allah ﴿ﷺ﴾ said: The conflicting people should give pardon, and the first of them should be considered first, even it is a woman.

The conflicting people meant in this hadith are the heirs of a murdered person, and that they should give pardon means that they should agree to pardon the killer if anyone of them expresses his pardon, even if the person is a woman. Moreover, the statement of the Messenger of Allah ﴿ﷺ﴾ "The first of them should be considered first" implies that the heirs of the killed should be considered according to their closeness to him; the closer person should be considered before other than them. This is how Abu Dawud explained the hadith. But the chain of its transmission contains a narrator called Hisn bin Abdir-Rahman or Ibn Muhsin, Abu Hudhayfah Ash-Shami. Abu Hatim made a comment that depicts his weakness in narration about him, he said, I do not know anyone who reported hadith from him except Al-Awzai; so also, I do not know anyone who traced him back to his ancestry (such that proper findings can be made about his state).

Ahmad, Abu Dawud, An-Nasai, and Ibn Majah collected another hadith from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather. He reported that the Messenger of Allah ﴿ﷺ﴾ judged that the blood relations of a woman should pay blood money on her behalf, and that they will not inherit her except from what remains after her primary heirs. However, if she is killed, her rights belong to her heirs; they can either take blood money or request for killing the murderer.

However, the chain of transmission of the hadith contains Muhammad bin Raashid Ad-Dimashqi Al-Makhhuli, and there are conflicting comments

about him, some of the scholars regarded him as a trustworthy narrator and some others bear a contrary view. Nevertheless, the statement of the Messenger of Allah: ...or request for killing the murderer indicates that they have the right, and which can be withdrawn by their pardon or the pardon of one of them. This opinion is the opinion of Al-Itrah, Al-Shafi'i, Abu Hanifah and his companions.

As for the fact that the heirs of a murdered person should wait until their younger co-heir grows of age before they decide, the proof for that is what was mentioned about the fact that the rights belong to them all, and a child cannot make a decision before he reaches adulthood.

As for the assertion that vengeance is not taken for the harms caused by a victim of a transgression while trying to rescue himself, that is because of the hadith of Imran bin Husayn ﷺ in Sahihayn and some other collections. He ﷺ reported that a man bit another man's finger, the man bitten then removed his hand and in the process the two incisors of the one who transgressed removed from his mouth. They then went to the Messenger of Allah ﷺ for judgment, he ﷺ then said:

يَعَضُّ أَحَدُكُمْ أَخَاهُ كَمَا يَعَضُّ الفَحلُ ؟ لا دِيَةَ لَك

Would any of you bite his brother as a bull bites (and still request for blood money)? You don't have any right to blood money.

The like of the hadith is also reported in Sahihayn and some other collections from the hadith of Yala bin Umayyah, and the opinion suggested from all these evidences is the opinion of the majority of scholars.

As for the statement that if someone held another person for a third person to kill him, the killer is killed and the person who held him is jailed, that is because of the hadith of Ibn Umar ﷺ that is collected by Al-Daraqutni. Ibn Umar reported that the Prophet ﷺ said: If a person holds another person and the one held is killed by another person, the killer is killed, and the who held the victim is jailed.

The hadith is reported from the path of Ath-Thawree, from Ismail bin Umayyah on the authority of Nafi, from Ibn Umar ﷺ. Mamar and others also reported it from the path of Ismail. However, Al-Daraqutni commented that those who reported it with a chain of transmission not linkable to the messenger of Allah – are more. Al-Bayhaqi also reported it and he concluded that the correct opinion about the state of the hadith is that it is Mursal hadith – a hadith whose chain

of transmission omits the companion who narrated the hadith, but someone below the level of a companion, and linked it to the Messenger of Allah ﷺ. He also said that the hadith is not known to be authentic. But Ibn Hajar, in his comment about the hadith, said: The men of its transmission are authentic, and Ibn Al-Qattan authenticated it as well.

Al-Shafi'i reported that Ali ﷺ judged concerning a man who deliberately killed another man while he was been held by another man that, the killer be killed, and the one who held him be jailed until death.

The opinion suggested from all these narrations is the opinion of Al-Itrah, Al-Hanafiyyah, and Al-Shafi'iyyah. This opinion could also be corroborated by the word of Allah:

فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ

Then whoever transgresses against you, you transgress against him with the same level of transgression [Al-Baqarah: 194]

Summarily, in this situation, the killing of the one who killed falls within the command from the evidences that commanded killing the killers, and jailing the one who held him falls within the scope of exemplary punishments, which he deserves for holding the person until he was killed. However, it is mentioned from An-Naqi, Malik, and Al-Layth that he is killed as well, because he and the killer jointly killed the person.

As for the assertion that blood money and expiation are involved in killing mistakenly, that is because of the text of the Noble Book as informed by the way of its construction, among restrictions and detailing. Generally, there is consensus of scholars concerning payment of blood money and making expiation; they only differ about some of the instances involved. For instance, they differ about making expiation from the wealth of a child who killed, because his deliberate killing is regarded as a mistake. This difference is a known to one of them, those who do not see it compulsory from his wealth argue that the obligation of payment of blood money is upon those who are religiously considered responsible. It is therefore, not compulsory except on the adult. However, those who do consider it compulsory argue that the obligation is addressed to the situation, and which must be done whatever the case may be. This is also the case with an insane person. And an expiation that is referred to is what is stated in the Noble Book, among the act of freeing a slave, feeding the poor, and fasting. As for the blood money, we are going to explain it later,

so also, what is related with the blood money of non-deliberate killing that may be similar to a deliberate one.

As for the assertion that payment of blood money is upon one's blood relations in the father's family, that is because of the hadith of Abu Hurairah ﴿ﷺ﴾ that is reported in Sahihayn. He said: The Messenger of Allah ﴿ﷺ﴾ judged that a male or female slave be given as blood money for causing the foetus of a woman from Lihyan clan a woman to drop dead, and the woman against whom the judgment was given later died as well. He ﴿ﷺ﴾ then judged that her inheritance goes to her children and her husband, and her blood relations pay the blood money levelled against her.

In another narration that is also reported in Sahihayn, he said: and he ﴿ﷺ﴾ judged that the blood money of the woman killed was upon the blood relations of the woman killer. In Muslim and some other collections, it is reported that Jabir ﴿ﷺ﴾ said: The Messenger of Allah ﴿ﷺ﴾ ordained blood money for every act of killing.

Abu Dawud and Ibn Majah also reported that a woman from Hudhayl clan killed another woman from the clan, and each of them has a child and husband. The Messenger of Allah ﴿ﷺ﴾ judged that the blood money of the woman killed be upon the blood relations of the killer, and freed her child and husband. The blood relations of the killed woman then said: Her inheritance is for us. The Messenger of Allah ﴿ﷺ﴾ said to them: Her inheritance is for her husband and child.

Al-Nawawi authenticated the hadith, but its chain of transmission contains Mujaalid, who is weak. However, we have earlier mentioned the hadith of Amr ibn Shuaib that the Messenger of Allah ﴿ﷺ﴾ judged that the blood relations of a woman pay blood money on her behalf.

Generally, scholars agree upon the validity of blood money, they only disagree about some details concerning it, and the amount each member of the blood relations should pay.

29 كتاب الديّات
Book of Blood Money

The blood money for a Muslim man is a hundred head of camel, or two hundred head of cattle, or two thousand head of sheep, or a thousand dinar, or twelve thousand dirham, or two hundred garments. However, for a deliberate or deliberate-like killing, the condition is harsher; it is also a hundred camels but forty of them must be pregnant. The blood money for a free non-Muslim under a Muslim rule is half of the blood money for a Muslim, and for a woman it is half of a man's own; so also, the limbs and other parts of the body for what is more than one third of the complete blood money. A complete blood money for a life is paid for the two eyes, the two lips, the two hands, the two legs, and the two testicles, and a half for one of any of them. Also, a complete blood money is paid for the nose, the tongue, the manhood, the back bone, but for a skull fracture that penetrates the cerebrum and a stabbing that penetrates the abdomen, one-third of the complete blood money of the victim. Moreover, for a cut that dislocates the bone, one-tenth of the complete blood money plus a half of one-tenth, and for a cut that only breaks the bone, one-tenth. Furthermore, for a tooth, half of one-tenth, so also for a cut that only exposes the bone. For other than those parts, the blood money for any harm caused to any other part of the body will be the amount of any related part to those mentioned. For a fetus, if caused to drop dead, the blood money is a male or female slave, and for a slave, his blood money, worth, and the compensation for any harm caused to him is relative to his kind, worth, and the harm done as well.

Explanation:

I say: As for the proportions mentioned for the amount payable for blood money, that is because of the hadith of Attaa bin Abi Rabaa from the Prophet ﷺ, and in another narration from Attaa, on the authority of Jabir ﷺ, from the Prophet ﷺ. He reported that the messenger of Allah ﷺ ordained that the payment of blood money for the people whom their wealth is camel, a hundred camels, for the people of cattle, two hundred cows, for the people of sheep, two thousand sheep, and for the people who have dresses, two hundred dresses.

Abu Dawud reported the hadith with two chains of transmission, one of them is linkable to the messenger of Allah ﷺ while the other is not. But the two

chains contain Muhammad bin Ishaq, who reported the hadith with ananah[55] manner of transmission in the both chains.

Ahmad, Abu Dawud, An-Nasai, and Ibn Majah reported another hadith from the path of Amr ibn Shuaib, on the authority of his father, from his grandfather. He said: the messenger of Allah ﷺ ordained that whoever wants to give blood money from cattle, should give two hundred head of cattle, and whoever wants to give it from sheep should give two thousand head of sheep. The chain of transmission of this hadith also contains Muhammad bin Raashid Ad-Dimashqi Al-Makhhuuli; a number of scholars have spoken about him, some of them gave ill comments about him while a lot others certified him.

In the hadith of Amrr bin Hazm, he reported that the blood money for murder offence is a hundred camels. This hadith is an authentic hadith and it has been mentioned earlier while discussing the issue of killing a man for a woman in vengeance. It is also mentioned in the hadith that the blood money for people who may wish to pay in gold currency is one thousand dinar.

Furthermore, Abu Dawud reported from the hadith of Ibn Abbas ﷺ that a man from Bani Adiyy clan killed someone, the messenger of Allah ﷺ then ordered that the blood money of twelve thousand dirham be paid. At-Tirmidhi reported this hadith with two chains of transmission; one is linkable to the messenger of Allah ﷺ while the other is not.

Abu Dawud also reported another one from the hadith of Amr ibn Shuaib, on the authority of father, from his grandfather. He said: the blood money at time of the messenger of Allah ﷺ was eight hundred dinar or eight thousand dirham, and the blood money for the people of the book was half of that of the Muslims. And that was the case until Umar ﷺ became the leader of the Muslims; during his reign, he stood and gave sermon one day, and said: the price for camels has become very high. He therefore raised the blood money; for the people paying in currency; one thousand dinar for the people paying in gold currency and twelve thousand for those who were paying in silver currency. For the people paying it with cattle, he raised it to two hundred head of cattle, for those paying with sheep, two thousand sheep, and for those paying with dresses, two hundred dresses.

Moreover, it is not strange to say that this hadith does not contradict the previous ones because the proportions that were mentioned in those narrations were from the messenger of Allah ﷺ directly. However, scholars differ about

55 The 'an'anah manner of transmission is a manner that suggests that the narrator who reported a hadith with it does not hear the hadith from his acclaimed teacher, and it becomes a fault in the chain of transmission for which a hadith is rejected if the narrator is known to usually acts deceitfully in his transmission.

the amount payable for blood money, but the truth about it is what the Sharah establishes, as discussed here.

As for the assertion that the condition for the payment of the blood money for a deliberate killing and deliberate-like killing is harsher than non-deliberate one; a hundred camels among which forty must be pregnant, that is because of the hadith of Uqbah bin Aws from someone among the companions of the messenger of Allah ﷺ. He reported that the Prophet ﷺ gave sermon on the Day of Conquer of Makkah and said:

أَلَا وَإِنَّ قَتِيلَ خَطَأِ العَمْدِ بِالسَّوْطِ وَالعَصَا وَالحَجَرِ دِيَةٌ مُغَلَّظَةٌ مِائَةٌ مِنَ الإِبِلِ مِنْهَا أَرْبَعُونَ مِنْ ثَنِيَّةٍ إِلَى بَازِلِ عَامِهَا كُلُّهُنَّ خَلِفَةٌ

Behold! The condition for the payment of blood money for a deliberate-like killing is harsher; either killing with a whip, cane, or by stoning, a hundred camels among which forty must be pregnant, and their ages must be from above age five to age nine.

Ahmad, Abu Dawud, An-Nasai, Ibn Majah, Al-Bukhari in his book At-Tariq, and Al-Daraqutni also reported the hadith. Al-Bukhari in his own report mentioned the difference that occurred among the narrator's of the hadith in the ways of their narrations.

Ahmad and Abu Dawud reported another hadith from the path of Amr ibn Shuaib, on the authority of his father, from his grandfather, that the Prophet ﷺ said:

عَقْلُ شِبْهِ الْعَمْدِ مُغَلَّظٌ مِثْلُ عَقْلِ الْعَمْدِ وَلاَ يُقْتَلُ صَاحِبُهُ وَذَلِكَ أَنْ يَنْزُوَ الشَّيْطَانُ بَيْنَ النَّاسِ فَتَكُونُ دِمَاءٌ فِي عِمِّيَّا فِي غَيْرِ ضَغِينَةٍ وَلاَ حَمْلِ سِلاَحٍ

The condition for the payment of the blood money for a deliberate-like killing is as harsher as the condition for the payment for a deliberate one, even though it does not involve killing as it is in a deliberate killing, and it occurs when Satan (Shaytan) springs between people, which then leads to killing without any previous rancour or fight.

Ahmad, Abu Dawud, An-Nasai, Ibn Majah, Al-Bukhari in At-Tariq, and

Al-Daraqutni also reported from the hadith of Abdullah bin Amr that the messenger of Allah ﷺ said:

أَلَا إِنَّ قَتِيلَ الخَطَأِ شِبْهِ العَمْدِ قَتِيلَ السَّوْطِ أَو العَصَا فِيهِ مِائَةٌ مِنَ الإِبِلِ مِنْهَا أَرْبَعُونَ فِي بُطُونِهَا أَوْلَادُهَا

Behold! The blood money for a deliberate-like killing, done with either a whip or cane, is a hundred camels among which forty must be pregnant.

Ibn Hiban and Al-Qattaan authenticated the hadith. The collectors that were mentioned as well collected the hadith from the hadith of Abdullah bin Umar ﷺ. There are other supportive narrations under the section.

Majority of the scholars from among the companions of the Prophet ﷺ, those who came after them, and those who came later had the opinion that killing is classified into three: deliberate killing, deliberate-like killing, and non-deliberate killing – killing by mistake. Consequently, the vengeance with respect to each of them varies, a deliberate killing involves killing of revenge, while non-deliberate killing only involves blood money, but deliberate-like killing, which is the one that is done with things that normally do not kill; for instance the killing done with a cane, a whip, or a needle, while the person intended to kill. This kind of killing involves a harsh payment of blood money; a hundred camels among which forty must be pregnant.

Among the scholars that bear this opinion are Zaid bin Ali, scholars of the Shafieyyah School of Thought, and scholars of the Hanafiyyah School of Thought, Ahmad and Ishaaq. However, Malik, Layth, and Al-Bukhari opined that killing are only of two forms, deliberate and non-deliberate; and according to them, any killing that may occur through any means, or from anyone who is not considered responsible religiously, or from an unwilling killer, or killing with things that do not ordinarily kill is regarded as a non-deliberate killing. In addition, a deliberate killing according to them is what is different from all those ways of killing. Therefore, they do not place killing of vengeance upon someone who does a deliberate-like killing. The author of Al-Bahr reported that as the consensus of the scholars, even when the majority of scholars have a different view.

As for the fact that the blood money for a non-Muslim under a Muslim rule is half of that of a Muslim, that is because of the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather that the messenger of Allah ﷺ said:

عَقْلُ الكَافِرِ نِصْفُ دِيَةِ عَقْلِ المُسْلِمِ

The blood money for a non-Muslim is half of that of a Muslim.

Ahmad, An-Nasai, and At-Tirmidhi reported the hadith, and At-Tirmidhi rated it sound while Ibn Jaaruud authenticated it. Ibn Majah also reported the like of it.

Ibn Hazm also reported from the hadith of Uqbah bin Aamir that the messenger of Allah ﷺ said: The blood money for a Pagan under an Islamic rule is eight hundred dirham. At-Tahawi, Al-Bayhaqi, and Ibn Adyy also reported it, but the chain of its transmission contains Ibn Lahihah, who is weak. Al-Shafi'i, Al-Daraqutni, and Al-Bayhaqi reported that Said bin Musayyib said: Umar made the blood money for Jews and Christians four thousand dirham, and that of the Pagans eight hundred.

Malik opined that the blood money for a non-Muslim under an Islamic rule is half of that of a Muslim, while Al-Shafi'i maintained that the blood money for an unbeliever is four thousand dirham — one-third of that of a Muslim. That is what is reported from him (Al-Shafi'i), but Al-Nawawi (a prominent scholar of the Shafi'iyah School of Thought) mentioned in his Manhaaj that the blood money for the Jews and Christians is one-third of that of a Muslim, and that of a Pagan is two-third of tenth of the blood money of a Muslim. Also, Al-Muhalee, the author of the explanation of that book, said: That is the opinion of Umar, Uthman, and Ibn Mas'ud. It is mentioned in Al-Bahr from Zaid bin Ali, the Qasimiyah, and Abu Hanifah that the blood money for a Pagan is the same as that of the people of the book. However, ath-Thawree, Az-Zuhri, Zaid bin Ali, Abu Hanifah, and the Hadawiyah opined that the blood money for a non-Muslim under Muslim rule is the same as that of a Muslim. Moreover, it is mentioned from Ahmad that the blood money of a non-Muslim under a Muslim rule is the same as that of a Muslim if killed deliberately, otherwise, his blood money is half of that a Muslim.

The scholars who held that the blood money for a non-Muslim under Islamic authority is half of that of a Muslim made evidence with the hadith mentioned up here, while those who opined that it is the same as that of a Muslim made evidence with the word of Allah:

وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ

...and if he belonged to a people with whom you have a treaty of mutual alliance, the blood money must be paid to his family [An-Nisa: 92]

However, we could respond to the scholars that made evidence with this verse that what is authentically established from the Sunnah of the Prophet ﷺ in respect of this issue; that the blood money for a non-Muslim is half of that of a Muslim, has limited the scope of this general statement from the Qur'an.

As for the fact that the blood money for a woman is half of that of a man, so also the limbs and other parts of the body for what is more than one third, that is because of the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather. He ﷺ reported that the messenger of Allah ﷺ said: The blood money for a woman is the same as that of man until it reaches one-third of a man's blood money An-Nasai and Al-Daraqutni reported it, and Ibn Khuzaymah authenticated it.

Al-Bayhaqi also reported from the hadith of Muadh ﷺ that the Prophet ﷺ said: The blood money for a woman is half of that of a man Al-Bayhaqi after reporting the hadith, said: the chain of its transmission is not authentic. Ibn Abi Shaybah and Al-Bayhaqi also reported that Ali ﷺ said: The blood money for a woman is half of that of a man in everything, Ibn Abi Shaybah also reported that from the statement of Umar ﷺ.

This hadith suggests that the blood money for a woman is half of that of a man, and that the compensation for the damages caused to her is the same as that of a man until the money reaches one-third of the complete blood money for a man. However, there is a difference of opinion concerning this issue among the scholars, past and present. Malik in Al-Muwatta and Al-Bayahqi reported from Rabi bin Abi Abdir-Rahman that he asked Saeed bin Musayyib: how much is the blood money for a woman's finger? He replied: ten camels, I asked further: how much for two fingers? he replied: twenty camels I asked again: how much for three fingers? He answered: thirty camels, I asked again: how much for four? He said: twenty camels I then said: would her blood money decrease when the damages become more and the affliction becomes higher? He replied: Are you from Iraq — where people view religion with their reasoning –? I replied: a knowledgeable someone who wishes to confirm his knowledge about the issue or an ignorant who wishes to learn. He then said: That is Sunnah my brother.

As for the fact that the complete blood money is paid in respect of the parts of the body mentioned in the text, that is because of the hadith of Amrr bin

Hazm that was mentioned earlier. The hadith contains the statement of the Prophet ﷺ: For the nose if cut-off, it attracts the complete blood money, so also the tongue, the two lips, the two testicles, the manhood, the back bone, and the two eyes, if totally damaged. For a leg if damaged, it attracts half of the complete blood money, for a skull fracture that penetrates the cerebrum, it attracts one-third of the total blood money, and for the stabbing that penetrates the abdomen, it attracts one-third of the total blood money. Also, for a cut that dislocates the bone, it involves fifteen head of camel, and for each finger of the hand or the leg, if cut off, it attracts ten head of camel. So also, for each tooth, it attracts five head of camel, and for a cut that only exposes the bone but does not penetrate, it attracts five head of camel.

Ahmad also reported from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather, that the messenger of Allah ﷺ ruled that if the nose is totally cut-off, it attracts the complete blood money, but if only the edge is cut-off, it attracts half of the blood money. He also ruled that an eye attracts half of the total blood money; for a leg or hand, it attracts half of the blood money, for the skull fracture that penetrates into the cerebrum, it involves one-third of the blood money and for a stabling that penetrates into the bone, it attracts fifteen head of camel.

Abu Dawud and Ibn Majah also reported it but without mentioning an eye and the stabbing that penetrates into the bone. However, the chain of its transmission contains Muhammad bin Raashid Ad-Dimashqi Al-Makhhuuli, some scholars have given ill comments about him while a lot others certified him. At-Tirmidhi also reported another hadith from Ibn Abbas ﷺ and he as well authenticated it, that the Prophet ﷺ said:

دِيَةُ أَصَابِعِ اليَدَيْنِ وَالرِّجْلَيْنِ سَوَاءٌ عَشْرٌ مِنَ الإِبِلِ لِكُلِّ أُصْبُعٍ

The blood money for the hand and leg fingers is the same, ten head of camel for each finger of them.

Ahmad, Abu Dawud, An-Nasai, Ibn Majah, and Ibn Hiban also reported it from the hadith of Abu Musa ﷺ. Also, Ahmad, Abu Dawud, and An-Nasai reported from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather, that the messenger of Allah ﷺ said:

فِي كُلِّ أُصْبُعٍ عَشْرٌ مِنَ الإِبِلِ وَفِي كُلِّ سِنٍّ خَمْسٌ مِنَ الإِبِلِ وَالأَصَابِعُ سَوَاءٌ وَالأَسْنَانُ سَوَاءٌ

Every finger attracts ten head of camel, and every tooth attracts five head of camel; the worth of all the teeth is the same, so also the fingers.

Ahmad, the people of As-Sunan, Ibn Khuzaymah, and Ibn Jaaruud reported another hadith from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather, and it is authenticated by Ibn Khuzaymah and Ibn Jaaruud, that the messenger of Allah ﷺ said:

فِي الْمَوَاضِحِ خَمْسٌ خَمْسٌ مِنَ الإِبِلِ

Each cut that exposes the bone attracts five head of camel.

In the Bukhari and some other collections, it is reported from Ibn Abbas ﷺ that the messenger of Allah ﷺ said:

هَذِهِ وَهَذِهِ سَوَاءٌ يَعْنِي: الْخِنْصَرَ وَالإِبْهَامَ

This and this are the same, that is, the pinkie and the thumb.

Abu Dawud and Ibn Majah also reported from Ibn Abbas ﷺ that the messenger of Allah ﷺ said:

الأَسْنَانُ سَوَاءٌ الثَّنِيَّةُ وَالضِّرْسُ سَوَاءٌ

Teeth are the same in (value), the incisor and molar.

The penetration into the cerebrum in the hadith is when a fracture on the head

penetrates into the inner brain or its soft outer layer; Umar, Ali, the Hanafiyyah School of Thought, and the Shafi'iyah bear the opinion of the obligation of payment of one-third of the blood money for this damage. Also, the penetration into the abdomen refers to the stabbing that cuts into the abdomen, the majority of scholars agree that it is compulsory that one-third of the blood money is paid for it as well. Furthermore, the cut that dislocates the bone refers to the cut that dislocates the bones from their places; Ali, Zaid bin Thabit, Al-Itrah, the Shafi'iyah School of Thought, and the Hanafiyyah opine that it is mandatory that fifteen head of camel is paid as the blood money.

Al-Daraqutni, Al-Bayhaqi, and Abdur-Razaq reported from the hadith of Zaid bin Thabit ﷺ that the Prophet ﷺ ordained for Al-Hashimah ten head of camel, and Al-Hashimah is a cut that only breaks the bone. It has been mentioned that this hadith is Mawkuuf — a hadith that is only traceable to a companion. However, the hadith has the ruling of one reported from the Prophet ﷺ because it gives a specification that could not have been given without a knowledge about it from the Prophet ﷺ. And the meaning of a cut that exposes the bone is a cut the only removes the flesh up to the bone level without breaking or smashing it.

However, scholars differ about those ways of cutting: that which removes the flesh, that which dislocates the bone, and that which only breaks the bone, do these cuttings limited to only the head or other parts of the body are inclusive? Apparently, the ruling that judges this case is that which says: not being specific in things that require specification makes those things have general implication or consideration, as known in the knowledge of Islamic fundamentals.

As for the fact that other parts of the body that do not have recommendation as regards their blood money will follow the parts related to them, that is because it is imperative that aggressions are paid for, otherwise, the blood of the victim would be wasted for no just reason. Therefore, the fact that there is no recommendations for those parts does not stop them been paid for, as inferences and deductions could be made to those cases from the parts that are related to them among the parts specifications are given concerning them.

For instance, it is known from the Shari'ah that the blood money for a cut that removes all the flesh and exposes the bone is half of one-tenth of the complete blood money of the victim. Therefore, if a cut is made such that only half of the flesh is removed and the remaining half to the bone is intact, the compensation is half of the blood money of the cut that removes all the flesh and exposes the bone. So also, if the cut removes one-third of the flesh, its compensation will be one-third of the complete blood money for the victim, and so on.

In the same vein, if only a part of a finger is removed, the compensation will be relative to the whole finger if cut off. For instance, if half of a finger is cut off,

the compensation for it is half of one-tenth of the blood money of the victim, and so on. That is also the case with the teeth, if half of a tooth is cut off, the compensation is half of the blood money for a tooth. Moreover, this way is followed for all the parts their blood money are compulsorily paid, such as the nose, if half of it is removed, the compensation for it is half of the blood money for the nose, and a manhood and all others. This is the closest way to the truth concerning this issue; it depicts justice and conforms to the Shari'ah.

As for the assertion, if a fetus is caused to drop dead the blood money is a male or female slave, that is because of the hadith of Abu Hurairah ﷺ in Sahihayn. He reported that the messenger of Allah ﷺ judged that a male or female slave be given as the blood money for the fetus of a woman from Lihyah clan that was caused to drop dead. The like of the hadith is also established in Sahihayn from the hadith of Al-Mugirah and Muhammad bin Maslamah ﷺ. However, if the baby comes out alive, but died out of an aggression, the complete blood money or killing of vengeance becomes the case. That is the case with a free baby, that is, the baby of a free woman, not a slave. The difference of opinion concerning Al-Girrah— a male or female slave — is much, and it has been discussed well in the book Sharhu Al-Muntaqa.

As for the fact that the blood money for a slave, his worth, and the compensation for any harm caused to him is relative to his kind, worth and the harm done to him, there is no difference of opinion about this. Scholars only differ about what should be done when these compensations are more than the blood money for a free person, should the increment be paid or not? However, what is apparent is following his worth in any aggression or harm caused to him, such that what should be half of the blood money of free person be, what should be one-third of it be, and what should be one-tenth be, and so on.

As for an animal if killed, it attracts payment of its worth, and if any damage is done to it, the payment is the worth of the damage done to it. Even though there is no specific evidence for this assertion, the general evidences available in the religion point to it. Among that general view is the fact that a slave and animals are what people possess, therefore whoever kills or damages any of them must be responsible for his deed, as it is compulsory on him to take the responsibility of any damages he caused to other people's any other belongings. It is then paramount that he bears the responsibility of the damages he caused to the slaves and animals.

بَابُ القَسَامَةِ

Chapter 29.1 Swearing of Killing

If the people who are accused of killing are of a known group, they are to make swearing fifty times (by fifty persons, once each per person), and the family of the person killed is to choose whom to swear among those group of people. However, if they refuse to swear they will have to pay blood money, but once they make the swearing, the blood money is withdrawn. Moreover, if the case is ambiguous, the blood money will be given from the central purse of the Muslims.

Explanation:

I say: As for the assertion that the number of swearing that is upon the accused people is fifty, that is because of the statement of the Prophet ﷺ:

فَتُبْرِئُكُمْ يَهُودُ بِخَمْسِينَ يَمِينًا

...then the Jews will disclaim you with fifty swearing.

This hadith is reported in Sahihayn from the hadith of Sahal bin Abi Hathmah رضي الله عنه.

As for the assertion that if they refuse to swear they will have to pay blood money, but if they swear the blood money will be withdrawn, that is because of the hadith reported by Muslim and some other collectors. They reported it from the hadith of Abu Salamah bin Abdur-Rahman and Sulayman bin Yasaar from someone among the companions of the Prophet ﷺ that the Messenger of Allah ﷺ acknowledged the swearing of killing that were done at the time of ignorance.

Moreover, at that time, it is established that the family of the killed person used to give the accused group or family the opportunity to choose to either pay blood money or make swearing, as mentioned in the swearing of killing Bani Hashim did, reported by Al-Bukhari and An-Nasai from the hadith of Ibn Abbas رضي الله عنهما. The story is a lengthy one, but it was mentioned that the murderer was known, and that Abu Talib gave him the opportunity to take the option of

his choice. He said to him: Choose any one of these three options you like: if you like you can give a hundred heads of camels for killing our brother, and if you like you can make fifty persons from your clan swear that you did not kill him, otherwise we will kill you in his place. The man returned to his people and informed them of what Abu Talib said, and they said: We are going to swear. A woman from Bani Hashim that was married to a man from the people and had a young boy for him came to Abu Talib and said: O Abu Talib! I wish you choose my son in place of a man among who will swear, and spare him of swearing on the day of swearing, Abu Talib agreed. A man from them also came to Abu Talib and said: O Abu Talib! You want fifty people from us to swear against the payment of a hundred heads of camels, that will be one person in place of two camels; here are two camels, take them from me and spare me of swearing on the day of swearing. He also accepted the camels in the man's place. The remaining forty-eight people then came and swore. Ibn Abbas added: By Allah, Whom my soul belongs, it was not up to a year when all of them died.

As for the assertion that if the case is ambiguous, the blood money will be given from the general Muslim purse, that is because of the hadith of Sahal bin Abi Hathmah ﷺ. He said: Abudullah bin Sahal and Muhayyisah bin Masuud went to Khaybar, and the people of Khaybar, at the time, were under peaceful settlement with the Muslims. On getting to Khaybar, they both departed for their different assignments. However, when Muhayyisah came to meet Abdullah bin Sahal later, he met him killed, lying in his blood. He took him up from the blood and buried him. He thereafter made his journey back to Al-Madinah, and reported the case to his people. Abdur-Rahman bin Sahal and the two brothers, Muhayyisah and Huwayyisah, then went to the Messenger of Allah ﷺ to inform him of the case. Abdur-Rahman, the youngest of them, wanted to start explaining the case, but the Prophet ﷺ stopped him and said: Let your elders talk! Let your elders talk! He then stopped and the two others spoke. After listening to them, the Prophet ﷺ said to them: Can you swear, so that you have your right from the people they replied: How do we swear when we did not witness the matter and we did not see it by ourselves? The Prophet ﷺ then said to them: Then the Jews will disclaim you with fifty swearing, they replied: how do we take the swearing of the unbelievers? The Prophet ﷺ then gave them the blood money by himself.

This hadith is reported in Sahihayn and some other collections. However, in another narration of the hadith, there is the addition: the Messenger of Allah ﷺ wished not to waste his blood, he then gave a hundred camels to them as his blood money from the Zakat camels. Moreover, scholars greatly differ about this matter of swearing of killing, but what is mentioned here is the closest to being the truth about it, and it is the one that follows the noble Islamic Shari'ah.

In another narration of the hadith of Sahal, it is mentioned that the messenger of Allah ﷺ said:

يُقْسِمُ خَمْسُونَ مِنْكُمْ عَلَى رَجُلٍ مِنْهُمْ فَيُدْفَعُ بِرُمَّتِهِ

Fifty people among you will swear against one person among them, and he will be executed.

The people then said: How do we swear over an issue we did not witness.

Ahmad and Al-Bayhaqi reported that Abu Sa'id (ﷺ) said: The Messenger of Allah (ﷺ) saw someone killed in between two villages, he (ﷺ) ordered that the distances from the place where the man was killed be measured to each of the villages. The people found that he was closer to one of the villages by an arm's length. The Prophet (ﷺ) then ordered that the village took the responsibility of his blood money.

Al-Bayhaqi commented about this hadith thus: Only Abu Israel reported this hadith from Atiyyah and he is not a reliable narrator.

Al-Uqayli in his own comment said: This hadith does not have any basis.

Abdur-Razaq, Ibn Abi Shaybah, and Al-Bayhaqi reported from the path of Ash-Shabee that someone was found killed between a valley and a mountain during the era of Umar (ﷺ). He then commanded that the distance between where the man was killed be measured to the two villages; the people found that he was closer to the valley. Umar (ﷺ) then commanded that fifty persons among them should swear with the wording: I did not kill him, and I do not know who killed him, which they did. He thereafter ordered that they pay his blood money, they people of the village then said: O the leader of the Muslims, the swearing we made did not save us our money nor the money saved us the swearing. Umar (ﷺ) then replied: That is the right judgment.

Al-Daraqutni reported the like of this hadith, so also Al-Bayhaqi from Said bin al-Musayyib and it contains the addition: I judged between you with the judgment of your Prophet (ﷺ). Al-Bayhaqi after reporting the hadith said: Referring this hadith to the Messenger of Allah (ﷺ) is wrong, because its chain of transmission contains Umar bin Subhi, whom scholars agree is not reliable. Al-Shafi'i also commented about the hadith, he said: The hadith is not authentic, Ash-Shabee reported it from Al-Harith Al-Aawar; such narration cannot establish any judgment because of its weakness, supposing it is traceable to the Prophet (ﷺ), what about when it is traceable to the Messenger of Allah (ﷺ). It cannot, therefore, be used to establish any ruling whether its chain of transmission is authentic or not.

Consequently, the correct opinion is returning to the way of swearing of killing of the Jahiliyah time that the Messenger of Allah ﷺ endorsed. And that manner has been explained up here.

Abu Dawud reported another version of the hadith of Sahal bin Abdillah's case from the hadith of Abu Salamah bin Abdir-Rahman and Sulayman bin Yasaar, and they both reported from someone among the companions of the Messenger of Allah ﷺ. They both reported that a companion had mentioned that the Messenger of Allah ﷺ started his response to the case with the Jews, he said to them: Fifty persons among you will swear that you were not the one that killed him. And that when they refused, he ﷺ then said to the Ansar: You can swear then. The Ansar then replied: O Messenger of Allah! How do we swear over something we did not witness. The Messenger of Allah ﷺ then placed the blood money on those Jews because the man was found in their premises.

If this version of the story is correct, it does not still contradict what was said about the fact that it is compulsory upon the accused people to pay blood money if they refuse to swear, but it is contradictory to what is established in Sahihayn about the story, if the two stories reported only one incidence. Some of the people of knowledge opine that the hadith is weak; therefore, reference should not be made to it.

30 كتاب الوصيّة
Book of Will

Writing a will is compulsory upon whoever has things to will, and prejudice is not allowed in it. It is also not allowed for someone to will for his rightful heirs, so also a will is not done on non-permissible things. The amount to be willed should only be close to one-third of the total money owned by the person writing the will. When the person dies, it is compulsory that his debts are paid off before implementing the will he wrote. And whoever left nothing from which his debts could be paid, the Islamic authority will pay on his behalf.

Explanation:

I say: As for the fact that it is compulsory upon whomever has things to will to make his will, that is because of the hadith of Abdullah bin Umar ﷺ in Sahihayn and some other collections that the Messenger of Allah ﷺ said:

مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُرِيدُ أَنْ يُوصِيَ فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلاَّ وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ

It is not right for any Muslim who has things to will to delay it for two days without having it written with him.

Attaa, Az-Zuhri, Abu Mijlaz, Talha bin Misfar, and some others bear the opinion of the obligation of writing a will. Also, Al-Bayhaqi reported that as being the former opinion of Al-Shafi'i, and it is the opinion of Ishaq, Dawud, Abu 'Awwanah, and Ibn Jarir. However, the majority of scholars opine that writing a will is not compulsory, rather; it is recommended, but the hadith cited shortly is a good answer to their claim.

As for the assertion that prejudice is not allowed when writing a will, that is because of the hadith of Abu Hurairah ﷺ. He reported that the Messenger of Allah ﷺ said: A man or a woman will engage in good deeds for sixty years, but when he/she writes his/her will at the time of death, he/she will do that with prejudice, which will then earn him/her hell." Abu Hurairah after reporting the

hadith then recited: [...after the implementation of the will made or payment of the debt incurred, without any prejudice. That is the order from Allah...] [An-Nisa: 12]

He recited it till the word of Allah: [... and that is a great success]

Abu Dawud and At-Tirmidhi reported this hadith.

Ahmad and Ibn Majah also reported the like of the hadith, but in their own narrations, they reported the span of life of seventy years in place of the sixty years in this hadith. At-Tirmidhi rated this hadith as a sound hadith, but the chain of its transmission contains Shahar bin Hawshab, whom scholars have made some ill comments about, but Ahmad and Ibn Main certified him. In addition, Said bin Mansuur reported another hadith with an authentic chain, but only traceable to a companion, not the Prophet ﷺ, and that companion is Ibn Abbas رضي الله عنهما. He said: Prejudice in will writing is one of the greatest sins.

An-Nasai reported this hadith with a chain traceable to the Messenger of Allah ﷺ, and the men of its transmission are reliable narrators.

Aside all these narrations, the verse itself is enough to establish non-permissibility of prejudice in will making, because it gives an acceptable will the condition of it not involving prejudice. More so, a number of people of knowledge have reported the consensus of scholars over the invalidity of a will that involves prejudice.

As for the assertion that it is not allowed to will for one's rightful heirs, that is because of what is reported from Amrr bin Khaarijah that he heard the Messenger of Allah ﷺ saying:

إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ فَلاَ وَصِيَّةَ لِوَارِثٍ

Allah has indeed given every rightful owner his right, so, there is no will for the heirs.

Ahmad, Ibn Majah, An-Nasai, At-Tirmidhi, Al-Daraqutni, and Al-Bayhaqi reported the hadith, and At-Tirmidhi authenticated it.

Also, Ahmad, Abu Dawud, Ibn Majah, and At-Tirmidhi reported it from the hadith of Abu Umaamah, and At-Tirmidhi rated it sound, but the chain of its transmission contains Ismail bin Ayyash, who is weak. However, his narrations from the people of Ash-Sham are authentic, and this narration is from one of

them. He reported it from Shurahbil, and he is from Ash-Sham. He is also a certified narrator. Al-Haafidh Ibn Hajr also authenticated it.

Moreover, Al-Daraqutni reported it from the hadith of Ibn Abbas ﷺ. Al-Haafidh Ibn Hajr commented about this version as well, he said: The men of transmission of this narration are reliable narrators and the wording of the hadith reads: It is not allowed that a will is made for one's heir, except other members of the heir permit him.

Al-Daraqutni also reported another version from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather, that the messenger of Allah ﷺ said: There is no will for a heir, except other heirs permit such.

Al-Hafidh commented about this hadith in At-Talqis, he said: The chain of transmission of this hadith is bad.

However, there are other narrations under this section. There is one with Ibn Majah, which he reported from the hadith of Anas ﷺ, and another one with Al-Daraqutni, which he reported from the report of Ali and Jabir ﷺ.

Al-Shafi'i commented about this issue thus: This text concerning this has been reported in successions. He then said: We met the scholars of verdict and those we learnt from among the historians of Quraysh and other than them not in any disagreement about the fact that the Prophet ﷺ, in the year of the Conquer of Makkah, said: There is no will for the heirs. Those scholars inherited this statement from their teachers, whom they learnt from, and those people were distinguished categories among the people of knowledge. This text thus became a report from reliable sources to reliable hands, and such report is stronger than one person's narration.

This hadith will therefore give limitations to the scope of the verse: [...after the implementation of the will written or payment of the debt incurred]. This is the opinion of the majority of scholars.

As for the assertion that a will is not done on non-permissible things, that is because of the hadith of Abu Dardaa ﷺ that is collected by Ahmad and Al-Daraqutni. He ﷺ reported that the Prophet ﷺ said: Verily, Allah gives you the opportunity to earn reward, at death, with one-third of your property, that being a way of increasing your kindness, and a way of increasing your good deeds.

Ibn Majah, Al-Bazaar, and Al-Bayhaqi also reported this hadith from the hadith of Abu Hurairah ﷺ, but its chain of transmission is weak. Al-Daraqutni and Al-Bayhaqi also reported it from the hadith of Abu Umaamah ﷺ and its chain of transmission is weak as well. Al-Uqayli also reported it in ad-Duafaa from the hadith of Abu Bakr As-Sidiq ﷺ, but its chain of transmission

contains a rejected narrator. Ibn As-Sakan, Ibn Qaanie, Abu Nuaym and At-Tabarani also reported it from the hadith of Khalid bin Abdillah As-Sulami, whom scholars differ about his companionship.

Nevertheless, all these narrations, when considered together, will give support to one another and make the context useful. The hadith therefore shows that the permission given by Allah for his servants to make wills of one-third of their properties is for them to increase their good deeds; and a will made on non-permissible things is a sin, not a good deed.

In addition to that, Allah has prohibited sins for His servants in His Book and through His Prophet ﷺ, even if there were no specific evidence that prohibits prejudice in will writing, the general evidences that prohibit evil deeds and committing sins would have been enough to prohibit that.

As for the assertion that the amount to be willed should only be close to one-third of the total money of the person writing a will, that is because of what is reported from Ibn Abbas رضي الله عنهما in Sahihayn and some other collections. He said: It would have been better if people make their wills lesser than one-third of their properties, because the Messenger of Allah ﷺ said:

الثُّلُثُ وَالثُّلُثُ كَثِيرٌ

(You may give) one-third, one-third is even much.

This statement of the messenger of Allah ﷺ is also found in the hadith of Sad bin Abi Waqaas رضي الله عنه where he ﷺ said to him:

لَه الثُّلُثُ وَالثُّلُثُ كَثِيرٌ أَو كَبِيرٌ

(You may give) one-third, one-third is even much.

The Prophet ﷺ said that when Sad asked him: Do I make a will covering two-third of my property? And the Prophet ﷺ replied him: No. He asked again, What about a half of it?, And the Prophet ﷺ answered: No. He asked the third time:

What about one-third? The Prophet ﷺ then said:

الثُّلُثُ وَالثُّلُثُ كَثِيرٌ أَوْ كَبِيرٌ ، إِنَّكَ إِنْ تَذَرْ وَرَثَتَكَ أَغْنِيَاءَ خَيرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ

You may give one-third! One-third is even much, and that you leave your heirs buoyant is better than leaving them in a poor state, begging people for a living.

This hadith is reported in Sahihayn and some other collections. Moreover, the majority of scholars bear the opinion of non-permissibility of willing more than one-third of one's property even if the person writing the will does have anyone to inherit him. However, Al-Hanafiyyah opines that it is permissible for someone who does not have any heir to will more than one-third of his property, and that is also the opinion of Ishaq, Shariq, and Ahmad in one of the reports from him. There are people among the companions who had that opinion too, among whom is Ali and Ibn Mas'ud ﷺ. These made evidence with the fact that the verse that speaks about will writing in the Qur'an does not give any specification as to how it should be written, and that the specification that is mentioned in the Sunnah is as relates to someone who has heirs. It is reported in Al-Bahr that that is the opinion of Al-Itrah as well.

Ahmad, Abu Dawud, and An-Nasai reported from the hadith of Abu Zaid Al-Ansari that a man freed his six slaves, at his death, and he did not have any property besides that. The Messenger of Allah ﷺ then made a lot between the six slaves and freed only two of them while the other four remained slaves.

In another narration of Abu Dawud, he ﷺ reported that the Messenger of Allah ﷺ said: If I were to witness him before his burial, he would not have been buried in the Muslim graveyard. Muslim and some other collectors reported the hadith from the hadith of Imran bin Husayn ﷺ. In another report of Ahmad, it is mentioned that the man's heirs from the Bedouin Arabs came to inform the Messenger of Allah ﷺ about what the man did, and he ﷺ said: Did he really do that? If I knew earlier I wouldn't have prayed over his corpse.

As for the assertion that it is compulsory that debts are paid from the person's property before wills are implemented, that is because of the lengthy hadith of Sad that is reported by Ahmad and Ibn Majah with a chain that its men of transmission are men of authentic transmission. He ﷺ reported that his brother died and left three hundred dirham, and left his family as well. He added: I wished to take care of his family with the money, the Prophet ﷺ then said to me: Your brother is held into ransom because of the debts he owed, pay his debt. He replied: O Messenger of Allah! I have paid his debts except

two dinar claimed by a woman and she did not have any proof for that, the Messenger of Allah ﷺ then said: Give her, she is right.

Moreover, there is no difference of opinion about this issue. This word of Allah, The Most High, also points to that:

مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ

...after the implementation of the will written or payment of the debt incurred [An-Nisa: 12]

As for the assertion that whoever dies without leaving any property behind from which his debt could be paid the Muslim authority will pay on his behalf from the general Muslim purse, that is because of the hadith of Abu Hurairah ﷺ, collected in Sahihayn and some other collections. He ﷺ reported that the Messenger of Allah ﷺ said in a sermon:

مَنْ خَلَّفَ مَالاً أَوْ حَقاً فَلِوَرَثَتِهِ ، وَمَنْ خَلَّفَ كَلاًّ أَوْ دَيْناً فَكَلُّهُ إِلَيَّ ، وَدَيْنُهُ عَلَيَّ

Whoever leaves wealth behind, the wealth is for his heirs, but whoever leaves family or debts behind; to take care of his family becomes my responsibility, so also the payment of his debt.

Ahmad, Abu Dawud, An-Nasai, Ibn Hiban, and Al-Daraqutni reported the like of the hadith from the hadith of Jabir ﷺ. Al-Bayhaqi and Al-Daraqutni reported it from the hadith of Abu Sa'id ﷺ, Al-Tabaranee reported it from the hadith of Salman ﷺ, and Ibn Hiban from the hadith of Abu Umaamah ﷺ in his book Ath-Thiqaat.

31 كتاب المَوارِيث
Book of Inheritance

The matter of inheritance is elaborately explained in the Gracious Book of Allah. It is compulsory to start the sharing with the primary heirs, those who are to take specific shares of the inheritance, while the remaining goes to the secondary heirs, the secondary blood relations. One's sisters are regarded as secondary heirs in the presence of one's daughters. The granddaughter of a (dead) son will take one-sixth of the inheritance when in connection with a daughter in order to complete the two-third of the inheritance meant for daughters. So also, the case applies to half and full-aunts when they are only to inherit, a half-aunt will take one-sixth of the inheritance in order to complete two-third of the inheritance. The grandmother or grandmothers will take one-sixth, only if the dead person does not have a mother, nor a grandfather, if no one is available from those who can cut him off. Brothers and sisters of the dead will not inherit, at all, in the presence of a son or a grandson of a male child, or his father, and there is a difference of opinion concerning whether or not they can inherit in the presence of a grandfather. A half uncle will not inherit in the presence of a full uncle, and the blood relations will inherit one another and they are to be given preference over the general Muslim purse with respect to any remaining wealth after sharing of the inheritance. In the case of rivalry, a closer heir should be given preference. A rejected child by swearing with an adulterous or dubious wife will not inherit except from his mother and her relatives, and they will inherit him as well. A newborn will not inherit except his life is confirmed with either shouting or the like. Furthermore, the person who freed him, if he does have any heirs to inherit him, owns the property a freed slave, but if he has heirs, the person who freed him will only take the left over property after the rightful heirs. Moreover, it is forbidden to sell-off or give out a successive family title, and there is no inheritance between the members of two different religions, so also a murderer will not inherit the person he killed.

Explanation:

I say: Be informed that, in that summary, we did not reiterate what has been elaborately mentioned in the Gracious Book concerning the inheritance because it is known, we only mentioned what is reported in the Sunnah as well as what is reported from the majority of scholars. Also, as it is the custom in

this writing, we did not mention any baseless issue, or anyone it bases is only a mere reasoning. A mere reasoning is not worthy of putting up in writing, because every scholar has his reasoning and volitional efforts in cases where no direct evidence is found. And in those instances, the reasoning or opinion of any scholar will be placed over others.

Therefore, anyone who combines what is mentioned in the Gracious Book with what is mentioned here has indeed learnt the established and the authentic knowledge of inheritance that is available in the Book of Allah and the Sunnah of His Messenger ﷺ. If any case, thereafter, occurs to him and it is not mentioned either in the Book of Allah or the Sunnah of His Messenger ﷺ, he can then make his volitional effort as well, following the popular hadith of Muadh.

As for the assertion that it is compulsory that the sharing begins with the primary heirs, those who are to take specific shares of the inheritance, while the secondary heirs, the blood relations, take the remaining, that is because of the hadith of Ibn Abbas ﷺ in Sahihayn and some other collectors. He ﷺ reported that the Messenger of Allah ﷺ said:

أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقِيَ فَهُوَ لأَوْلَى رَجُلٍ ذَكَرٍ

Share the inheritance to the rightful heirs, and what is left, thereafter, should be given to the closest man of the family relation.

The inheritance mentioned in this hadith refers to the specific portions to be given to each of the rightful heirs, and the rightful heirs are the primary heirs mentioned in either of the text of the Qur'an or Sunnah. Also, what is left thereafter, refers to the remaining property after the primary heirs have taken their shares; this property will be shared between the closest blood relations of the dead person.

As for the assertion that one's sisters when in connection with one's daughters will be regarded as secondary heirs, who will only take the remaining shares of the inheritance without any specification, that is because of the hadith of Ibn Mas'ud ﷺ that is reported by Al-Bukhari and some other collectors. This case is just as the case of a man from the blood relations who will take the remaining share of the inheritance after the primary heirs. Ibn Mas'ud reported that the Prophet ﷺ shared a property between a daughter, a granddaughter of a male child, and a sister, he gave the daughter half of the inheritance, and the granddaughter one-sixth of the inheritance to complete two-third, while

he gave the remaining property to the sister. This hadith also indicates that the granddaughter of a male child will take one-sixth of the inheritance in connection with the daughter of the dead, in order to complete the two-third of the property meant for daughters.

As for the fact that a half aunt will take one-sixth of the inheritance in connection with a full aunt, it is said that scholars generally agree upon this fact.

As for the assertion that a grandmother or grandmothers will inherit one-sixth of the inheritance provided the mother is no more, that is because of the hadith of Qabisah bin Dhuayb, collected by Ahmad, Abu Dawud, Ibn Majah, At-Tirmidhi, Ibn Hiban, and Al-Hakim, and At-Tirmidhi authenticated it. He ﷺ reported that a grandmother came to Abu Bakr ﷺ asking him for her share of the inheritance of her grandson. Abu Bakr said to her: Your right of the inheritance is not specified in the Book of Allah and I do not know anything from the Sunnah of the Messenger of Allah ﷺ concerning that, you can go and come back later, I shall ask people concerning the issue. He then asked people about it and Al-Mugirah bin Shubah said to him: I witnessed the Messenger of Allah ﷺ giving a grandmother one-sixth of the inheritance. Abu Bakr asked him: Did anyone witnessed that with you? Muhammad bin Maslamah Al-Ansari then stood and witnessed to what Al-Mugirah bin Shubah said. Abu Bakr then gave the grandmother one-sixth of the inheritance. Another grandmother to the same dead man later came to Umar ﷺ asking him of her share of the inheritance also. Umar said to her: Your right of the inheritance is not specified in the Book of Allah, but it is mentioned in the Sunnah that your rights (you and the other grandmother) are only one-sixth of the inheritance. If you both come into agreement on it, it is for both of you, but anyone of you takes it all, it is for her.

Ibn Hajar commented about this hadith thus: Its chain of transmission is authentic, because the men of its transmission are reliable narrators, except that its looks like a Mursal hadith; Al-Qabisah did not hear narration from Abu Bakr and it is not possible that he witnessed the story, as Ibn Abdil-Barr mentioned. Moreover, scholars differ about Al-Qabisah's birth, but what is authentic is that he was born in the year of the Conquest of Makkah, which makes it impossible for him to witness the event.

Abdullah bin Ahmad in the Musnad of his father, Ibn Mandah in his Mustakhraj, and At-Tabarani in al-Kabir reported from the hadith of Ubadah bin As-Saamit that the Prophet ﷺ gave two grandmothers one-sixth of the inheritance for both of them. However, this report is a report of Ishaq bin Yahaya from Ubadah, and he did not hear hadith from him.

In another hadith collected by Abu Dawud and An-Nasai, Buraydah reported that the Prophet ﷺ ordered that grandmother be given one-sixth of

the inheritance in the absence of the mother of the dead. Ibn Sakan, Ibn Khuzaymah, and Ibn Jaaruud authenticated the hadith, while Ibn Adiyy found supportive narrations for it, such that it could be rated authentic. But its chain of transmission contains Ubaydullah Al-Ataki, whom scholars differ about his reliability.

Al-Daraqutni also reported another hadith from Abdur-Rahman bin Yazid with a Mursal chain of transmission that the Messenger of Allah ﷺ gave three grandmothers one-sixth of the inheritance, two of them were from the father's side while the third was from the mother's side.

Abu Dawud also reported the hadith in his book Al-Maraseel from Ibrahim An-Naqi, so also Al-Bayhaqi from the Mursal of Al-Hasan, and Al-Daraqutni from Zaid bin Thabit with various chains of transmission. There are other narrations under the section.

The author of Al-Bahr commented concerning this issue thus: The compulsory right of the grandmothers from the inheritance is one-sixth, even if they are many, so far they have the same status in relation to the dead. For instance, the paternal and maternal grandmothers are of the same status, no one of them has priority over the other. However, if they are of different status, the closer one among them will block the chance of the farther, but their chances of inheritance cannot all be blocked except the mother of the dead is alive. The father will block the chance of the grandmothers from his side, while the mother will block the chance of all the grandparents.

As for the assertion that a grandfather will take one-sixth of the inheritance when in connection with who cannot block his chance of inheritance, that is because of the hadith of Imran bin Husayn ﷺ that a man came to the Prophet ﷺ and said: My grandson died, what is my share of the inheritance? The Messenger of Allah ﷺ said to him: One-sixth. When the man turned away and took his way back, the Prophet ﷺ called him back and said: You are entitled to another one-sixth. When he turned back again, the Prophet ﷺ called him and said: The second one-sixth is from the remaining portion. Ahmad, Abu Dawud, At-Tirmidhi reported the hadith, and it is authenticated by At-Tirmidhi.

Ahmad, Abu Dawud, An-Nasai and Ibn Majah reported from Al-Hasan that Umar ﷺ asked people concerning the percentage the Messenger of Allah ﷺ ordered for grandfathers from the inheritance, Maqal bin Yasaar al-Muzani ﷺ stood and said: I witnessed the Messenger of Allah ﷺ judging the case. Umar asked him: What was the percentage? He answered: One-sixth. Umar then asked: The sharing was between the grandfather and who among the heirs? He replied: I do not know. Umar then asked again: You do not know! That answer does not suffice then.

The chain of transmission of this hadith is not connected, Al-Hasan did not hear any hadith from Umar ﷺ, but he heard hadith from Maqal because Al-Bukhari and Muslim collected his hadith from Maqal in Sahihayn.

The companions of the Prophet ﷺ differed greatly about this issue, and different cases were reported from them. However, the evidences available indicate that a grandfather has a right to one-sixth of the inheritance, and that that portion is his compulsory right of the inheritance and what might be added to it is only a gift from the remaining portion of the inheritance after giving the compulsory shares, as mentioned in the hadith of Imran.

Moreover, the condition of not being in connection with who can block his chance of inheritance is added because if anyone like the father or his like among those who can shield him is available, he will not be given anything, and the person will take the whole of the inheritance.

As for the assertion the brothers and sisters will not inherit anything at all in the presence of any of the son, the grandson of a male child, or the father of the dead, there is no difference of opinion concerning that among the people of knowledge.

As for the fact that there is a difference of opinion as to whether or not brothers can inherit in the presence of the grandfather, that is because there is no evidence to establish either of the opinions. A group among the companions of the Prophet ﷺ, among whom is Abu Bakr and Umar, opined that the grandfather should be preferred to the brothers, while some others among them, among whom is Ali and Zaid bin Thabit, opined that the brothers should block the chance of the grandfather. This difference is a broad one; those who opine that grandfather should block the chance of the brothers argue that grandfather is called father, while the other group argues that the grandfather is not a real father; calling him father is figurative. The difference, however, leads to the difference that occurs in the sharing that combines a grandfather and brothers of a dead person, as usually mentioned in the books of inheritance.

As for the assertion that full-brothers will inherit in the presence of the daughters but half-brothers will not, that is because of the hadith of Jabir ﷺ, collected by Ahmad, Abu Dawud, Ibn Majah, At-Tirmidhi, and Al-Hakim, and authenticated by At-Tirmidhi. He said: the wife of Sad bin ar-Rabi came to the Messenger of Allah ﷺ with her two daughters from Sad and said: O Messenger of Allah, these are Sad's daughters, their father was killed from your army in the battle of Uhud. Their uncle took their father's wealth, and he did not leave anything for them, but no one will marry them except they have some wealth. The Messenger of Allah ﷺ replied her: Allah shall prescribe for us concerning that. Consequently, the verse of inheritance was revealed. The Messenger of Allah ﷺ then sent for the man — the daughter's uncle —, and

said to him: Give Sad's daughters two-third of the inheritance, their mother one-eighth, and take the remaining. This is a proof for the fact that brothers will inherit with the daughters of the dead.

As for the assertion that the half-brothers will not inherit with the daughters, that is because of the word of Allah:

وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوِ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ

If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but left a brother or sister behind... [An-Nisa: 12]

This verse was revealed to this effect as evident in some recitations.

As for the fact that stepbrothers will not inherit in the presence of full-brothers, that is because of the hadith of Ali ﷺ, where he said: You people read this verse: ...after the implementation of the will or payment of the debts incurred... [An-Nisa: 12], but you know that the Messenger of Allah ﷺ ordered that debts are paid before the will is implemented, and that full-brothers, brothers from both parents, will inherit their brother, and stepbrothers, those from the same father alone, will not. That is, a man will inherit his brother from both parents, but he will not inherit his brother from only a father.

Ahmad, Ibn Majah, At-Tirmidhi, and Al-Hakim reported the hadith, but its chain of transmission contains Al-Harith Al-Aawar, who is weak. However, there is a consensus about this issue.

As for the assertion that the blood relations will inherit one another, that is because of the word of Allah:

وَأُولُوا الْأَرْحَامِ بَعْضُهُمْ أَوْلَى بِبَعْضٍ فِي كِتَابِ اللَّهِ

And the blood relations are preferred to one another (than others) in the Decree of Allah [Al-Ahzaab: 6]

This implies that if someone dies and leaves no one behind who can inherit him except the blood relations among who are neither primary nor secondary

heirs, that is, those who will neither inherit by specifications nor remainder, they will inherit him in that case.

Also because of the word of Allah:

لِلرِّجَالِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ

There is a share for men from what is left by parents and close relatives, so also there is a share for women from what is left by parents and close relatives [An-Nisa: 7]

That is because men, women, and relatives are those included in the blood relations.

The hadith of Al-Miqdaam bin Madi Karb ﷺ can establish this issue further. Ahmad, Abu Dawud, Ibn Majah, An-Nasai, Al-Hakim, and Ibn Hiban collected it, and Al-Hakim and Ibn Hiban authenticated it. He ﷺ reported that the Prophet ﷺ said:

مَنْ تَرَكَ مَالاً فَلِوَرَثَتِهِ وَأَنَا وَارِثُ مَنْ لاَ وَارِثَ لَهُ أَعْقِلُ عَنْهُ وَأَرِثُهُ وَالْخَالُ وَارِثُ مَنْ لاَ وَارِثَ لَهُ يَعْقِلُ عَنْهُ وَيَرِثُهُ

Whoever leaves wealth behind, it is for his heirs, and I am the successor of whoever has no heir, I will pay blood money on his behalf and as well inherit him, and a maternal uncle shall be the successor of whoever has no heir, he will pay blood money on his behalf and as well inherit him.

Ahmad, Ibn Majah, and At-Tirmidhi reported another hadith from the hadith of Umar ﷺ, and At-Tirmidhi rated it good, that the Messenger of Allah ﷺ said:

وَالْخَالُ وَارِثُ مَنْ لاَ وَارِثَ لَهُ

A maternal uncle will inherit whoever has no heir.

At-Tirmidhi, An-Nasai, and Al-Daraqutni also reported this hadith from the hadith of 'A'ishah ﴿رضي الله عنها﴾, and At-Tirmidhi rated it sound, but Al-Daraqutni claimed that there is a confusion in it. Abdur-Razaq collected it from a man among the people of Al-Madinah, al-Uqayli and Ibn Asakir collected it from the hadith of Abu Dardaa ﴿رضي الله عنه﴾, and Ibn An-Najaar from the hadith of Abu Hurairah ﴿رضي الله عنه﴾; all of them collected it with the chains linkable to the Messenger of Allah ﴿ﷺ﴾. Summarily, it is a hadith with many chains of transmission, and the least of what could be said about it is that it is a good hadith.

There is also this hadith:

ابْنُ أُخْتِ القَوْمِ مِنْهُمْ

The son a people's sister is part of them.

It is an authentic hadith. It can also be used to establish this fact.

Among the supportive evidences is the fact that the Messenger ﴿ﷺ﴾ ruled that the blood relations of any woman accused of adultery and separated from her husband inherit the woman's rejected child, because these people are not but only blood relations to the child. This is the little about these narrations here; the general comments about them have been made in the book Sharh Al-Muntaqah.

Moreover, looking closely at the hadith:

فَمَا أَبْقَتِ الفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ

What remains thereafter is for the male closest blood relation.

It is possible we say that it indicates that the male relations are given preference over the female ones, which will then be supportive evidence to the hadith that negates the inheritance of the paternal and maternal aunts, and as well works in connection with the hadith: A paternal uncle will inherit. This way, we would have succeeded in resolving all the seemingly contradictory narrations under this section. Furthermore, some of the scholars are in support of this resolution, but the opinion of Abu Hanifah is only closer.

However, the companions of the Prophet ﷺ differed about the issue, so also those that came after them, but the majority of scholars support the opinion that permits blood relations to inherit. Moreover, as these evidences indicate that blood relations can inherit, they also inform that they should be preferred to the Muslim purse. That is, instead of remitting the remaining wealth after sharing of the inheritance into the general Muslim purse, it should be given to the available relatives of the dead.

This fact can be supported by the hadith of 'A'ishah ﷺ that is reported by Ahmad and the collectors of Sunan, and authenticated by At-Tirmidhi. She ﷺ reported that a freed slave of the Messenger of Allah ﷺ fell from a palm tree and died, and was brought to the Messenger of Allah ﷺ. The Prophet ﷺ asked the people: Does he has any heir or blood relation? The people replied in the negative. The Prophet ﷺ then said: Give his wealth to someone from his village. The statement of the Messenger of Allah ﷺ: ...or blood relation is an indication that the blood relations should be given preference over the Muslim purse.

Abu Dawud also collected from the hadith of Ibn Abbas ﷺ that people used to make alliance between one another and when they died they inherited one another, the act was later abrogated with the revelation of the verse of the Surah Al-Anfaal:

وَأُولُوا الْأَرْحَامِ بَعْضُهُمْ أَوْلَى بِبَعْضٍ فِي كِتَابِ اللَّهِ

And the blood relations are preferred to one another (than others) in the Decree of Allah [Al-Anfaal: 75]

However, the chain of transmission of this hadith contains Ali bin Al-Hasan bin Waqid, and there are some ill comments about him. Al-Daraqutni also collected it, and Ibn Sad collected the like of it from Abu Az-Zubayr. Nevertheless, the hadith indicates that the verse was revealed concerning the ruling of inheritance of the blood relations, and that it was revealed to stop the practice of inheritance of the allies from one another.

As for the fact that in the case of rivalry the closest relative should be given preference, that is the truth that one cannot fulfil the order of Allah on him except he takes to. I have discussed this issue elaborately in the book; I titled Eedhahu al-Qawl fi Ithbaat Masalah Al-Aql, where I responded to those who opposed the fact that close relations should be given preference.

As for the assertion that a rejected child will not inherit except from his mother and his mother's relatives, and that they can also inherit him, that is because of the hadith of Sahal bin Sad that is collected in Sahihayn and some other collections concerning the issue. The hadith is that which reported the case of the woman that was accused of adultery and was separated from her husband by swearing. The hadith mentioned that her child took after her lineage, and it then became practice that such child inherited his mother, and that the mother from him her compulsory share of inheritance.

Abu Dawud also collected from the hadith of Amr ibn Shuaib, on the authority of father, from his grandfather, that the Prophet ﷺ ruled that the inheritance of a rejected child be given to his mother and her heirs after her. But the chain of transmission of this hadith contains Ibn Lahihah, who is weak.

Abu Dawud, At-Tirmidhi, An-Nasai, and Ibn Majah collected another related hadith to the issue from the hadith of Wathilah bin Al-Aqsa. He reported that the Prophet ﷺ said: A woman will take possession of three forms of inheritance: the inheritance of a slave she freed, the inheritance of her adopted child, and the inheritance of a child rejected to her. At-Tirmidhi commented that it is a strange but good hadith. However, its chain of transmission contains Umar bin Rubah At-Taglibee, whom scholars have given some ill comments about; meanwhile, Al-Hakim also authenticated it.

Ahmad and Abu Dawud also reported another hadith from the hadith of Ibn Abbas ﷺ. He reported that the Messenger of Allah ﷺ said: There is no Al-Musaaaat[56] in Islam, but whoever have practiced it during the period of ignorance and got a child from it, the child shall be attributed to his relations. And whoever claims fatherhood to any child without a formal marriage, will not inherit the child and the child will not inherit either.

At-Tirmidhi also reported from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather, that the Prophet ﷺ said:

أَيُّمَا رَجُلٍ عَاهَرَ بِحُرَّةٍ أَوْ أَمَةٍ ، فَالْوَلَدُ وَلَدُ زِنَا لَا يَرِثُ وَلَا يُورَثُ

Any man that commits illegal sexual intercourse with either a free woman or a slave woman and gets a child from it, the child is a bastard, neither will he inherit nor will he be inherited.

56 Al-Musaa'aat is a form of adultery whereby the master of a female slave sends her out for illicit act for her to pay him any debt she may owe him, or only for him to amass wealth.

However, the chain of transmission of this hadith contains Abu Muhammad, Isa bin Musa Al-Qurashi Ad-Dimashqi. Al-Bayhaqi commented that he is a known narrator.

Abu Dawud also reported from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather, that the Prophet ﷺ ruled that any bastard from either a free woman or a slave woman that is attributed to any man at the time of ignorance shall continue to be attributed to him.

The chain of transmission of this hadith contains Muhammad bin Rashid Al-Makhhuli Ash-Shami; there are some ill comments about him. However, people of knowledge generally agree that a rejected child through swearing or a bastard will not inherit the father or the father's relatives, and they will not inherit him also, rather; he will inherit his mother and her relatives, and they will inherit him as well.

As for the assertion that a newborn will not inherit except his life is confirmed, that is because of the hadith of Abu Hurairah ﷺ that is collected by Abu Dawud that the Prophet ﷺ said:

إِذَا اسْتَهَلَّ الْمَوْلُودُ وُرِّثَ

If a newborn baby is confirmed alive, he is entitled to inheritance.

The chain of transmission of this hadith contains Muhammad bin Ishaq; it is popularly known that there are ill comments about him. However, it is reported that Ibn Hiban authenticated it. Nevertheless, there is another hadith reported in the Musnad of Ahmad in the collection of his son, Abdullah, from the path of Al-Miswar bin Makhramah and Jabir bin Abdillah ﷺ that the Messenger of Allah ﷺ said: A newborn baby will not inherit except his life is confirmed.

At-Tirmidhi, An-Nasai, Ibn Majah and Al-Bayhaqi also reported the hadith with the wording: If a baby is born by miscarriage but confirmed alive before he later died, the funeral prayer should be performed on him and should inherit.

The chain of transmission of this version contains Ismail bin Muslim, who is weak. At-Tirmidhi commented about it thus: It is reported with a chain of transmission linkable to the Prophet ﷺ but the one reported without the link to the Prophet ﷺ is better. This is also the resolution of An-Nasai about the hadith. Al-Daraqutni also commented in the book Al-Ilal that the version of the hadith with a linkable chain to the Prophet ﷺ is not authentic.

Moreover, what is meant by the confirmation of the life of newborn baby is looking forward for any sign that will show that he is born alive, such signs are shouting, crying, or the likes. And there is no difference of opinion among the scholars that the life of a newborn baby should be confirmed before being entitled to inheritance.

As for the fact that the inheritance of a freed slave is for the person who freed him if he does not have any relation to inherit him, and that the person will take any remaining property after the primary heirs of the slave take their portions, if he has any, that is because of the hadith:

الْوَلاَءُ لِمَنْ أَعْتَقَ

The fidelity of a freed slave is only to the person who manumitted him.

This hadith is authentic; it is reported in the authentic books of collections.

Ahmad also reported from the path of Qatadah, who reported from Salma bint Hamzah that her freed slave died and left a daughter, and when the Messenger of Allah ﷺ shared his inheritance, he ﷺ gave his daughter half of the inheritance and Y'alaa the other half. And Y'alaa was a son of Salma. The men of the chain of transmission of this hadith are reliable, only that Qatadah did not hear from Salma bint Hamzah. At-Tabarani also reported the hadith.

Al-Daraqutni reported a kind of this hadith, but from Ibn Abbas ﷺ that Hamzah's freed slave died and left a daughter and Hamzah's daughter was also available, when the Prophet ﷺ shared his inheritance he gave his daughter half of the inheritance and Hamzah's daughter the remaining half.

Ibn Majah also reported the like of the hadith from the hadith of the daughter of Hamazah's; An-Nasai reported it in that manner as well. But the chain of its transmission contains Muhammad bin Abdir-Rahman bin Abi Layla, who is weak. However, there is a difference of opinion concerning the name of Hamzah's daughter; some of the people of knowledge said it is Salma, while some others said it is Fatimah. Nevertheless, the two narrations contain evidences that support the fact that the heirs of a manumitted slave should have their share of the inheritance, while the remaining is given to the person who freed him or his relations.

Moreover, there is a difference of opinion among the scholars concerning the case of a freed slave that left his master and his blood relations behind, that is, without the presence of anyone primary or secondary heirs, who should take

first? It is reported from Umar, Ibn Mas'ud, and Ibn Abbas ﷺ that they said the master will not inherit the blood relations of his freed slave, which, therefore, implies that he will not given preference over them. But some others opine that he should be given preference over them. This opinion suggests that he will be the one to take the remaining portion of the inheritance after the primary heirs in the absence of the secondary heirs.

About the hadith of the freed slave of Hamzah, some people made evidence with it for the argument that the heirs of a master will be in the position to inherit the freed slave of their father after the primary heirs of the freed slave. But the truth is that he was the freed slave of Hamzah's daughter, not Hamzah's slave.

Ibn Abi Shaybah reported another hadith from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather. He ﷺ reported that the Prophet ﷺ said: The eldest son of a freed slave's master will alone share from the inheritance of the slave, and a woman will not inherit anything from manumitted slaves except the slaves she freed herself or those her freed slaves freed.

Al-Bayhaqi also reported from Ali and Zaid bin Thabit that they did not use to allow women to inherit from manumitted slaves except those they freed themselves. Al-Barqani reported another narration concerning this issue with the conditions that satisfy the conditions for authentic of hadith, he reported that Huzayl bin Shurahbil said: A man came to Abdullah bin Az-Zubayr and said: I freed a slave of mine and gave him total freedom, but he died and left no one to inherit him." Abdullah replied him: What you people called total freedom is not in Islam. That is a practice of the people of ignorance, you are the custodian of his wealth; you should therefore have his inheritance, but if you are not comfortable with it, we will take it from you and keep in the general Muslim purse.

As for the assertion that it is forbidden to sell-off or give out a successive family title, that is because of the hadith of Ibn Umar ﷺ reported in Sahihayn and some others collections that the Prophet ﷺ forbade selling off or giving out of the successive family title. There are many narrations under this section, some of which have been mentioned earlier in this work, the like of the hadith: A successive family title is like a family lineage; it should then neither be sold nor given out. Ibn Hiban and Al-Bayhaqi authenticated the hadith from the hadith of Ibn Umar ﷺ.

The majority of scholars bear the opinion that it is not permissible to either sell or give out successive family title, but Malik opposed it, so also some of the companions of the Prophet ﷺ before him.

As for the fact that people of different religions will not inherit one another, that is because of what Ahmad, Abu Dawud, Ibn Majah, Al-Daraqutni, and Ibn Sakan reported from the hadith of Abdullah bin Amr ﷺ that Messenger of Allah ﷺ said:

لاَ يَتَوَارَثُ أَهْلُ مِلَّتَيْنِ شَيْئاً

The people of two different religions will not inherit anything from one another.

At-Tirmidh also reported the like of this hadith from the hadith of Jabir ﷺ but without the addition of, anything, contained in this hadith. However, its chain of transmission contains Ibn Abi Layla, who is weak.

Al-Bukhari and some other collectors reported another hadith under this section from the hadith of Usamah ﷺ that the Prophet ﷺ said:

لاَ يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلاَ يَرِثُ الْكَافِرُ الْمُسْلِمَ

A Muslim will not inherit a non-Muslim, so also a non-Muslim will not inherit a Muslim.

Muslim reported this hadith as well. Al-Bukhari and some other collectors also reported the hadith: Did Aqil leave any house for us? Aqil and Talib were non-Muslims; they both only inherited Abu Talib.

The people of knowledge generally agree that a Muslim will not inherit a non-Muslim, so also, a non-Muslim will not inherit a Muslim, but they disagree regarding the people of other religions among themselves. However, the hadith of Abdullah bin Amr and Jabir ﷺ is a good answer to that.

As for the assertion that a murderer will not inherit someone he killed, that is because of the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather, that the Messenger of Allah ﷺ said:

لاَ يَرِثُ الْقَاتِلُ شَيْئًا

A murderer will not inherit anything.

Abu Dawud and An-Nasai reported the hadith as well, but Al-Daraqutni claimed that it is a faulty hadith, but Ibn Abdil-Barr found supportive narrations for it and thereof authenticated it. Malik, in Al-Muwatta, Ahmad, Ibn Majah, An-Nasai, Al-Shafi'i, Abdur-Razaq, and Al-Bayhaqi reported that Umar bin al-Khataab ﷺ heard the Prophet ﷺ saying: There is no inheritance for a murderer. But the hadith has disconnection in its chain of transmission.

Al-Daraqutni reported another hadith from the hadith of Ibn Abbas ﷺ with a chain of transmission linkable to the Messenger of Allah ﷺ. He said: A murderer will not inherit anything, but its chain of transmission contains Khathir bin Muslim, who is weak.

Al-Bayhaqi also reported another hadith from the hadith of Ibn Abbas ﷺ with the wording: No one will ever inherit anyone he kills, even if the person does not have any heir but him alone. In another version, it is reported with the wording: if even he is his father or his son, but its chain of transmission contains Amrr bin Barq, who is also weak.

At-Tirmidhi and Ibn Majah also reported the hadith from the hadith of Abu Hurairah with the wording:

القَاتِلُ لاَ يَرِثُ

A murderer will not inherit.

However, its chain of transmission contains Ishaq bin Abdullah bin Abi Farwa, who is weak. Summarily, these narrations give support to one another, and will therefore be capable of establishing the ruling of a murderer will not inherit, without any distinction between a deliberate and non-deliberate killing. In addition, the ruling also depicts that the murderer will not share anything from the blood money of the killed or any other property. This is the opinion of Al-Shafi'i, Abu Hanifah, and large number of the people of knowledge. But Malik, An-Naqi, and Al-Hadawiyah opined that someone who killed mistakenly

should inherit the person he killed, but only from his property and not from the blood money.

However, the difference made between the property of the killed and his blood money does not have any basis, and what At-Tabarani collected concerning the issue is enough to refute that claim. He reported that Umar bin Shaybah mistakenly killed his wife, and the Prophet ﷺ said to him: Pay her blood money, and you should not inherit anything from her. So also, what Al-Bayhaqi reported, that Adyy Al-Juthamee had two wives, and in the course of their fighting, one of them threw something at the other and she died. When the Messenger of Allah ﷺ came around, he reported the case to him ﷺ, he ﷺ then said: Pay her blood money, and she should not inherit anything from her. Al-Bayhaqi also reported that a man threw a stone and hit his mother. He then came to ask for his share of inheritance, the Messenger of Allah ﷺ said to him: Your share of her inheritance is the stone you threw. He ﷺ then ordered him to pay her blood money, and he did not share anything for him from the inheritance. There are many reports from the practice of many of the companions of the Prophet ﷺ concerning this issue, Al-Bayhaqi and some others scholars mentioned a number of them in their works.

Concerning the inheritance of the slaves from one another and from their masters, it is said that there is a consensus of scholars concerning the fact that slavery is one of the things that prevent one from having a share of inheritance. However, the consensus reported in this case is questionable, because the difference regarding whether a slave can inherit or not is known.

We, therefore, argue that he should inherit, because there is no evidence that stops him from inheriting; rather, there is evidence in support of that. It is reported from the hadith of Ibn Abbas ﷺ that a man died during the time of the Messenger of Allah ﷺ and did not leave any heir behind except his slave. The Messenger of Allah ﷺ then gave the slave the man's inheritance. Ahmad and the collectors of Sunan reported it, and At-Tirmidhi rated it sound.

Moreover, some of the people argued that the slave was not given the inheritance primarily; rather, it was given to him by chance, but that argument is contradictory to what is apparent from the hadith.

32 كِتَاب الجِهَاد والسّير
Book of Jihad and History

باب أحكام الجهاد
Chapter 32.1 Rulings of Jihad

Jihad is a voluntary obligation that must be done with and under an Islamic authority, whether good or bad, and with the permission of the parents[57]. If one engages in it with sincerity, it expiates all kinds of sins he might have committed before it, except a debt incurred and other people's right that must be returned. The help of unbeliever must not be sought except when necessary. It is compulsory that the army obeys their leader except in disobedience to Allah; and the leader should also return to his army to seek their advice in things he does, and he must be lenient with them, but not allow them to engage in forbidden acts. It is permissible that the authority conceals his mission when he moves out for Jihad. It is also permissible for him to send spies to the opponent's circle to seek information about them. It is the duty of the authority to arrange his soldiers and as well adopt flags and banners for identification. It is compulsory that the Muslim army call the unbelievers to three things before fighting; they should firstly call them to embrace Islam, secondly, they should give them the option of paying tribute, and finally fight them is they refuse all that. It is forbidden to kill women, children, and aged people in war except the situation calls for it. Mutilation and burning is forbidden. It is forbidden for anyone to flee from the battleground, except to other parties of the Muslims.

57 Scholars have classified Jihad into two, the compulsory and voluntary. Jihad will become compulsory in some of these situations, when an Islamic authority calls everyone to Jihad or commands everyone to go out for Jihad at a time, or when Muslims are to drive the unbelievers that invade their land. In these situations, every Muslim will stand up to defend his or her land and Islam, and no permission of parents is sought in these situations. However, Jihad can be voluntary, and that is when the authority does not specify anyone, rather; he gives people the opportunity to choose to either go with him or stay behind, and that happens in the Jihad of requisition.

Lastly, it is permissible for the Muslim army to invade unbelievers by night, as it is permissible for them to tell lies and adopt deceit in wars.

Explanation:

I say: The importance of Jihad and persuasion towards as mentioned in both the Book of Allah and the Sunnah of His Messenger ﷺ are well and widely known. A number of people of knowledge have also written books concerning it. Allah, The Most High, commanded His servants to do Jihad in His way; with their souls and wealth. He commanded them to hasten towards it when calls are made for it, and He prohibited slothfulness in their approach towards it. It is also established that the Messenger of Allah ﷺ said:

لَغَدْوَةٌ فِي سَبِيْلِ اللَّهِ أَوْ رَوْحَةٌ خَيرٌ مِنَ الدُّنْيَا وَمَا فِيْهَا

The early morning errand or movement in the way of Allah is better than this world and what it contains.

This hadith is collected in Sahihayn and some other collections from the hadith of Anas ﷺ. It is also established that he ﷺ said:

الْجَنَّةُ تَحْتَ ظِلاَلِ السُّيُوفِ

The paradise is under the auspices of swords.

This hadith is reported in Sahihayn and some other collections from the hadith of Abu Musa and Ibn Abi Awfa ﷺ. It is also collected in Al-Bukhari and some other collections that the Prophet ﷺ said:

مَنْ اغْبَرَّتْ قَدَمَاهُ فِي سَبِيلِ اللَّهِ حَرَّمَهُ اللَّهُ عَلَى النَّارِ

Whoever his feet are covered with dust in the way of Allah, Allah will prohibit him from entering hell.

It is also established that the Prophet ﷺ said:

رِبَاطُ يَوْمٍ فِي سَبِيلِ اللَّهِ خَيْرٌ مِنْ الدُّنْيَا وَمَا عَلَيْهَا

A day guard in the way of Allah is better than the world and what it contains.

This hadith is also reported in Sahihayn from the hadith of Sahal bin Sad ﷺ.

The collectors of as-Sunan also collected from the hadith of Muadh bin Jabal, which At-Tirmidhi authenticated, that the Prophet ﷺ said:

مَنْ قَاتَلَ فِي سَبِيلِ اللَّهِ فُوَاقَ نَاقَةٍ فَقَدْ وَجَبَتْ لَهُ الْجَنَّةُ

Whoever fights in the way of Allah for only a period between two milking of a she-camel, paradise has been made compulsory for him.

What a deed that makes paradise compulsory for someone who engages in it and prevents him from entering hell, and an ordinary early morning engagement in it and movement towards it is better than the world and what it contains!

As for the fact that Jihad is a voluntary obligation, that is because of the hadith reported by Abu Dawud from Ibn Abbas ﷺ that he said: This verse of the Qur'an:

إِلَّا تَنْفِرُوا يُعَذِّبْكُمْ عَذَابًا أَلِيمًا وَيَسْتَبْدِلْ قَوْمًا غَيْرَكُمْ وَلَا تَضُرُّوهُ شَيْئًا وَاللَّهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ

If you do not move forth (in the way of Allah), He will punish you with painful torment and replace you by another set of people, and you cannot harm Him at all; Allah is able to do all things. [At-Tawbah: 39]

And these ones:

مَا كَانَ لِأَهْلِ الْمَدِينَةِ وَمَنْ حَوْلَهُم مِّنَ الْأَعْرَابِ أَن يَتَخَلَّفُوا عَن
رَّسُولِ اللَّهِ وَلَا يَرْغَبُوا بِأَنفُسِهِمْ عَن نَّفْسِهِ ۚ ذَٰلِكَ بِأَنَّهُمْ لَا يُصِيبُهُمْ
ظَمَأٌ وَلَا نَصَبٌ وَلَا مَخْمَصَةٌ فِي سَبِيلِ اللَّهِ وَلَا يَطَئُونَ مَوْطِئًا يَغِيظُ
الْكُفَّارَ وَلَا يَنَالُونَ مِنْ عَدُوٍّ نَّيْلًا إِلَّا كُتِبَ لَهُم بِهِ عَمَلٌ صَالِحٌ ۚ إِنَّ اللَّهَ
لَا يُضِيعُ أَجْرَ الْمُحْسِنِينَ . وَلَا يُنفِقُونَ نَفَقَةً صَغِيرَةً وَلَا كَبِيرَةً وَلَا
يَقْطَعُونَ وَادِيًا إِلَّا كُتِبَ لَهُمْ لِيَجْزِيَهُمُ اللَّهُ أَحْسَنَ مَا كَانُوا يَعْمَلُونَ

It was not becoming of the people of Al-Madinah and the Bedouins of the neighbourhood to stay behind the Messenger of Allah (sallallahu alayhi wa sallam – when goes out to fight in the way of Allah) and they should not prefer their lives to his. That is because they will not suffer from thirst, or fatigue, or hunger, in the way of Allah, or make any step that raises unbelievers' anger, or inflict any injury upon an enemy, except that is written to their credit as righteous deeds. Surely, Allah will not waste the reward of the righteous. And they will not spend anything (in the way of Allah) small or big, or cross a valley, except that it is written to their credit, that Allah may reward them with the best of what they used to do. [At-Tawbah: 120-121]

Have been abrogated by the verse that was revealed after them, that is:

وَمَا كَانَ الْمُؤْمِنُونَ لِيَنفِرُوا كَافَّةً فَلَوْلَا نَفَرَ مِن كُلِّ فِرْقَةٍ مِّنْهُمْ طَائِفَةٌ
لِّيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ

And it is not proper that the believers go out to fight all together. It is enough that only a party goes forth from every troop of them, that they (those left behind) may get instructions in the religion, such that they may warn their people when they return to them, so that they may beware of evil. [At-Tawbah: 122]

Ibn Hajar rated this hadith good. However, At-Tabari said: It is possible that the verse: If you do not move forth (in the way of Allah), He will punish you with painful torment… talks about a special instance, like the instance of the Prophet ﷺ calling everyone to move out for Jihad while some people stayed back. Ibn Hajar thus commented: What is apparent is that the verse talks about special cases of invitation into Jihad and not that it has been abrogated.

However, Al-Hasan Al-Basri supported the opinion of Ibn Abbas ﷺ that the verse had been abrogated, as reported by At-Tabari from both of them. From the evidences that depict that Jihad is a voluntary obligation is that the Prophet ﷺ used to lead people to war himself sometimes and at another he would send people out for it while he stayed back at home, making do with the participation of only some parties of the Muslims. Also, he ﷺ used to send detachments from his army to different places from time to time, and sometimes some of the Muslims would be in the battle while others stayed at home.

The opinion of the majority of scholars is that Jihad is a voluntary obligation. However, Al-Mawardi took to the opinion that it was obligatory upon the Muhajirun - those who migrated from Makkah to Al-Madinah among the companions, and Al-Suhaylee opined that it was compulsory upon the Ansar - the people of Al-Madinah among the companions who accommodated the Muhajirun ﷺ. However, Ibn Musayyib opined that it is a compulsory act upon every Muslim, while some other groups of scholars were of the opinion that it was only compulsory during the period of the companions.

As for the assertion that it must be done with and under the Islamic authority, either good or bad, that is because none of the evidences that mention the obligation and importance of Jihad, as well as those that persuade towards it, from both the Book of Allah and the Sunnah of His Messenger ﷺ state otherwise. That is, none of these evidences gives the condition that the leader must be good, or that the commander of the Muslims in the battle must be trustworthy. Rather, Allah ordains these qualities upon His servants without any peculiarity to time, place, individuals, or leadership, good or bad. Therefore, making trustworthiness of the authority the condition for the obligation of Jihad does not have any basis born out of knowledge.

In addition, a dissolute person can sometimes be more useful in Jihad than a pious or dutiful person can, and what supports that, had been reported in the available texts of the religion, as it is well known.

For instance, Ahmad in Al-Musnad from the report of his son, Abdullah, Abu Dawud, and Said bin Mansur collected this hadith from the hadith of Anas ﷺ. He reported that Messenger of Allah ﷺ said: Three things are from the fundamentals of faith: Firstly, abstaining from labelling someone who proclaims Laailaha illa Allah - there is none worthy of been worshipped sincerely except Allah - Kafir for a sin he committed; he should not be removed from the fold of Islam for his deeds. Secondly, believing that the obligation of Jihad ever exists since Allah raised me as a Prophet, until the last group of nation will fight Ad-Dajal; no evil perpetration of an unjust leader or kindness of a good one can abolish it. Thirdly, nothing is paramount in Jihad than the intention of the person fighting in the way of Allah that word of Allah reign supreme.

It is also reported in Sahihayn and some other collections from the hadith of Abu Musa ﷺ that the Messenger of Allah ﷺ was asked concerning someone who fights to display his power, and someone who fights with enthusiasm, and the other that fights for showing off, who among these people fights in the way of Allah. The Prophet ﷺ replied:

مَنْ قَاتَلَ لِتَكُونَ كَلِمَةُ اللَّهِ هِيَ الْعُلْيَا فَهُوَ فِي سَبِيلِ اللَّهِ

He who fights for the word of Allah to reign supreme is the one who fights in the way of Allah.

As for seeking the permission of the parents, that is because of the hadith Abdullah bin Amr ﷺ. He reported that a man came to the Prophet ﷺ seeking permission to fight Jihad. The Prophet ﷺ asked him: Are your parents alive?, The man answered in affirmative. He ﷺ then said:

فَفِيهِمَا فَجَاهِدْ

Your fighting in the way of Allah is in them.

In another narration of Ahmad, Abu Dawud, and Ibn Majah the man was reported to have said: Here I am O messenger of Allah! I have come to fight with you in the way of Allah, but I left my parents crying. The Prophet ﷺ then said:

فَارْجِعْ إِلَيْهِمَا فَأَضْحِكْهُمَا كَمَا أَبْكَيْتَهُمَا

Go back to them and make them laugh as you made them cry.

Muslim also reported another version of this hadith.

Abu Dawud also reported from the hadith of Abu Sa'id ﷺ that a man migrated to the Messenger of Allah ﷺ from Yemen, and the Prophet ﷺ

asked him: Do you have anyone in Yemen? The man replied: Yes, my parents. The Prophet ﷺ asked him again: Did they give you permission to come? He replied: No. He ﷺ then said: Go back and seek their permission, if they permit you, you can then come and fight in Allah's way, otherwise, stay and take care of them. Ibn Hiban authenticated it.

Ahmad, An-Nasai, and Al-Bayhaqi also reported from the hadith of Muaawiyah bin Jaahimah as-Sulami, that Jaahimah came to the Prophet ﷺ and said: O messenger of Allah, I wish to go out and fight in the way of Allah, but I have come to seek your advice concerning that. He was asked whether his mother was alive or not, and he answered in affirmative. The Prophet ﷺ then said: Be dutiful to her; because your paradise is under her feet. But scholars widely differ about the chain of transmission of this hadith.

Moreover, the majority of scholars opine that it is compulsory for a child to seek the permission of his parents in Jihad and that it is forbidden for him to engage in it without the permission of either one or both of them, because being dutiful to them is a compulsory obligation while Jihad is a voluntary one. However, they added that if Jihad becomes compulsory, it is then not necessary for him to seek their permission.

The hadith reported by Ibn Hiban from the hadith of Abdullah bin Amr ﷺ concerning this issue indicates that. He said: A man came to the Messenger of Allah ﷺ and asked him concerning the best of deeds, he ﷺ answered: As-Salah, the man asked again: And which one after that? He ﷺ replied: Jihad – fighting in the way of Allah . The man then said: But I have parents who are alive. The Prophet ﷺ then said: I advise you to stay and take care of your parents, that is better. The man then said: By He Who raised you with truth, I shall leave them and fight in Allah's way. The Prophet ﷺ thereof replied him: You know better about your affair.

Moreover, scholars say that this hadith is taken for a compulsory Jihad, that is, when it becomes compulsory upon someone who has one of his parents or both alive to join people in Jihad. And this understanding is necessary in order to marry those narrations together.

As for the assertion that Jihad with sincerity of intention expiates all sins except debts, which the person needs to pay-up, that is because of the hadith of Abu Qatadah ﷺ that is collected by Muslim and some other collectors. He ﷺ reported that a man said to the Messenger of Allah ﷺ: O messenger of Allah, what if I am killed in the path of Allah, would that expiate my sins? The Prophet ﷺ replied:

نَعَمْ وَأَنْتَ صَابِرٌ مُحْتَسِبٌ مُقْبِلٌ غَيْرُ مُدْبِرٍ إِلاَّ الدَّيْنَ فَإِنَّ جِبْرِيلَ عَلَيْهِ السَّلاَمُ قَالَ لِي ذَلِكَ

Yes, if you persevered in the course and you have done that seeking Allah's reward and moving forward into the battle not fleeing away, except debt; Jibreel – may Allah be pleased with him – informed me of that.

Ahmad and An-Nasai also reported the like of the hadith from the hadith of Abu Hurairah.

Muslim and some others also reported from the hadith of Abdullah bin Amr ﷺ that the Messenger of Allah ﷺ said:

يُغْفَرُ لِلشَّهِيدِ كُلُّ ذَنْبٍ إِلاَّ الدَّيْنَ

All the sins of a martyr are forgiven except the debt.

At-Tirmidhi also reported the hadith from the hadith of Anas ﷺ. Furthermore, this ruling affects all other people's right without any distinction between a right and the other, be it the rights that are related to blood or those related to wealth. There is no difference between the two.

As for the fact that the help of a non-Muslim is not sought in Jihad except when necessary, that is because of the statement of the Messenger of Allah ﷺ to polytheist that sought to fight with him: Go back, I do not seek any assistance of polytheist in war. When the man embraced Islam, he ﷺ allowed him to join his army. Muslim and some other collectors reported it from the hadith of Abu Hurairah ﷺ.

Ahmad, Al-Shafi'i, and At-Tabarani collected the kind of the hadith from the hadith of Khubayb bin Abdur-Rahman, on the authority of his father, from his grandfather, and the men of its chain of transmission are trustworthy.

Ahmad and An-Nasai also reported from the hadith of Anas ﷺ that the Messenger of Allah ﷺ said: Do not seek light from a polytheist's light. The chain of transmission contains Azhar bin Rashid, who is weak, but the remaining men of the chain are trustworthy.

Al-Shafi'i also reported from the hadith of Ibn Abbas ﷺ that the Prophet ﷺ

sought the assistance of some persons from the Jews at the battle of Khaybar. Abu Dawud also reported that in its book Al-Maraseel from the hadith of Az-Zuhri. At-Tirmidhi also reported it with a Mursal chain.

Ahmad, Abu Dawud, and Ibn Majah reported another hadith from the hadith of Dhi Mikhbar. He said: I heard the Messenger of Allah ﷺ saying:

سَتُصَالِحُونَ الرُّومَ صُلْحًا آمِنًا وَتَغْزُونَ أَنْتُمْ وَهُمْ عَدُوًّا مِنْ وَرَائِكُمْ

You shall make a peace treaty with Rome, and you shall engage in wars while they are behind you, though they are enemy.

A large number of the people of knowledge bear the opinion that it is not permissible to seek the assistance of non-believers in Jihad, while some others opine that it is permissible. The evidence of those who permit it is that the Messenger of Allah ﷺ allowed the hypocrites to fight with him during the battle of Uhud where Abdullah bin Ubayy later cut-off his people from the Muslim army. So also, he made use of some of them at the battle of Hunayn. It is also reported in the books of history that a man called Quzmaan went with the Messenger of Allah ﷺ to the battle of Uhud and he was a polytheist, and he alone killed three persons from Abdud-dar's clan, the flag bearers of the disbelievers. He fought so much that the Prophet ﷺ commented about him: Allah will at times help this religion with a dissolute person. Among the evidence they cited is the case of people of Khuzaaah who joined the Prophet ﷺ against the Quraysh in the year of the Conquer of Makkah while they were polytheists.

Therefore, the way of marrying these narrations together is to say that it is not permissible to seek the assistance of non-Muslims in Jihad except when that becomes necessary; not at wish, when that is not necessary.

As for the assertion that it compulsory for the army to obey their leader except in disobedience to Allah, that is because of the hadith of Abu Hurairah رضي الله عنه that is reported in Sahihayn and some other collections that the Prophet ﷺ said:

مَنْ أَطَاعَنِي فَقَدْ أَطَاعَ اللَّهَ وَمَنْ عَصَانِي فَقَدْ عَصَى اللَّهَ وَمَنْ يُطِعِ الأَمِيرَ فَقَدْ أَطَاعَنِي وَمَنْ يَعْصِ الأَمِيرَ فَقَدْ عَصَانِي

Whoever obeys me has indeed obeyed Allah, and whoever disobeys me has indeed disobeys Allah, so also, whoever obeys the leader has indeed obeyed me, and whoever disobeys the leader has indeed disobeys me.

Another proof is what is reported from Ibn Abbas ﷺ concerning this word of Allah, The Most High:

أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الأَمْرِ مِنْكُمْ

Obey Allah and the Messenger (Muhammad ﷺ), and the people of authority among you.

He said: This verse is revealed in respect of Abdullah bin Hudhafah bin Qays when the Messenger of Allah ﷺ chose him to lead a detachment of the Muslim army. Ahmad and Abu Dawud reported it, and it is also in Sahihyan.

It is reported in Sahihayn as well, this hadith of Ali ﷺ. He said: The Messenger of Allah ﷺ sent a detachment out for a mission and chose a man from Al-Ansar a leader over them and commanded them to listen and obey him. While they were on their journey, the soldiers made him angry over an issue, he then said to them: Gather some fire-wood for me and the people did. He said to them: Set fire on it, which they also did. He then asked them: Did the Messenger of Allah ﷺ not order you to listen and obey me, and they replied him in affirmative. He said to them: Enter the fire, the people looked at one another and said: We have run unto the Messenger of Allah ﷺ only to be saved from fire. They were in that state until his anger subsided and the fire was extinguished. When they returned home, they informed the Messenger of Allah ﷺ of what transpired and he ﷺ said:

لَوْ دَخَلُوهَا لَمْ يَخْرُجُوا مِنْهَا أَبَدًا

If they entered, they would not have ever come out it.

He ﷺ also added:

لا طَاعَةَ فِي مَعْصِيَةِ اللَّهِ ; إِنَّمَا الطَّاعَةُ فِي الْمَعْرُوفِ

There is no obedience in sinful acts; obedience is only in what is good.

The narrations under this section are many, and it is stated elaborately in some of them that there is no obedience to the creature in disobedience to the Creator. The obedience to the leaders is only if they do not command disobedience to Allah.

As for the fact that the leader should be seeking the counsel of his soldiers, be kind to them, and stops them from forbidden acts, that is because all that are involved in the word of Allah, The Most High:

وَشَاوِرْهُمْ فِي الْأَمْرِ

...and consult them in the affairs [Ali 'Imran: 159]

Moreover, the Prophet ﷺ used to seek the advice of his army in his affairs, and that occurred from him ﷺ on several occasions.

Muslim and some other collectors reported that the Messenger of Allah ﷺ sought the advice of his companions when he heard about the return of Abu Sufyan from his trade. The story is a popular one. It is mentioned in the hadith that Sad bin Ubadah ﷺ said to the Messenger of Allah ﷺ: By He Who has my soul, if you were to command us to dive into the sea with our horses, we would have dived into it.

Ahmad and Al-Shafi'i reported that Abu Hurairah ﷺ said:

I do not know anyone at all that consults his companions as much as the Messenger of Allah ﷺ used to consult his companions.

Furthermore, Muslim and some others reported from the hadith of 'A'ishah ﷺ that she heard the Messenger of Allah ﷺ saying:

اللَّهُمَّ مَنْ وَلِيَ مِنْ أَمْرِ أُمَّتِي شَيْئًا فَرَفَقَ بِهِمْ فَارْفُقْ بِهِ

O Allah! Whoever assumes leadership over any affair of nation and he is lenient with them, be lenient with him.

Muslim also reported from the hadith of Maqal bin Yasaar ﷺ that the Messenger of Allah ﷺ said:

مَا مِنْ أَمِيرٍ يَلِي أَمْرَ الْمُسْلِمِينَ ثُمَّ لاَ يَجْهَدُ لَهُمْ وَيَنْصَحُ إِلاَّ لَمْ يَدْخُلْ مَعَهُمُ الْجَنَّةَ

There is no leader who assumes leadership over the Muslims and does not strive in respect of their affairs and be sincere to them, except that he will not enter paradise with them.

Abu Dawud also reported from the hadith of Jabir ﷺ that the Messenger of Allah ﷺ used to move behind the army when on a journey in order to urge on the weak people, or pick them up, or pray for them.

Ahmad and Abu Dawud also reported from the hadith of Sahal bin Muadh, on the authority of his father. He said: We were with the Messenger of Allah ﷺ in so and so battle while some people blocked a road, the Messenger of Allah ﷺ thereupon sent a caller to announce to the people that whoever confined people's abode or rub people's way will not have reward of Jihad. The chain of transmission of the hadith contains Ismail bin Ayyash, who is weak; Sahal bin Muadh is also weak. Nevertheless, there are evidences that depict the obligation of the act of commanding good and forbidding evil, and the best people to engage in this act are not but the leaders.

As for the fact that it is permissible for a leader to conceal his mission when he moves out for Jihad, that is because of the hadith of Kab bin Malik that the Prophet ﷺ used to conceal his mission when he went out for jihad. The hadith is Sahihayn and some other collections.

As for the permissibility of sending spies to the opponent's circle, that is because of the hadith of Jabir ﷺ reported in Sahihayn and some other collections that the Prophet ﷺ said on the day of the battle of al-Ahzaab: Who will get me information about the people? And Az-Zubayr answered: I. It is also reported

in Muslim and some other collections that the Messenger of Allah ﷺ sent some spies to look out for Abu Sufyan's caravan. It is also established that he sent someone to get the number of the opponent's army on the day of the battle of Badr. It is mentioned as well in the books of history and conquests that he ﷺ used to send spies to the opponent's circle and stay somewhere between his army and the opponent's army.

As for the fact that the leader should arrange his army during war and make flags and banners, that is because it is popularly reported from the Prophet ﷺ that he used to arrange his soldiers when he faced the enemy. He ﷺ would command some of them to be stay in some places and others in some other places. Among those instances was the battle of Uhud where he ﷺ commanded bowmen to stand at a place and told them not to leave the place even if they saw birds made off with him and other soldiers.

As for the flags and banners, the Prophet ﷺ used to adopt flags as reported in the hadith of Ibn Abbas ﷺ, collected by At-Tirmidhi and Abu Dawud. It is reported in the hadith that he said: The Prophet's ﷺ flag was black while his banner was white.

Abu Dawud also reported from the hadith of Simaak bin Harb from a man among his people, who also reported from another man from his people. He said: I saw the Prophet's flag ﷺ, it was yellow. But the chain of its transmission contains unknown narrators.

The collectors of Sunan, Al-Hakim and Ibn Hiban also reported from the hadith of Jabir ﷺ that the Prophet ﷺ entered Makkah, when he conquered it, with a white banner. Also, in the hadith of Al-Harith bin Hassan that he saw black flags in the Prophet's masjid ﷺ. At-Tirmidhi and Ibn Majah collected it and the men of its chain of transmission are men of authentic transmission.

There are other narrations under the section as well.

As for the assertion that it is compulsory that the Muslim army calls to the three things mentioned, before fighting, that is because of the hadith of Sulayman bin Buraydah, on the authority of his father, which is reported by Muslim and some other collectors. He said: Whenever the Messenger of Allah ﷺ sent someone to lead an army or a detachment, he would always admonish the person of the fear of Allah privately, between the two of them alone, and then wished the remaining soldiers farewell. He would then say to them: Fight in the name of Allah and for the sake of Allah, fight only the disbelievers in Allah; fight them, but do not assault, betray, or mutilate them, and do not kill their children. When you meet them, call them to three things, and accept any one of them they wish to choose and then abstain from fighting them. Call them into Islam, if they accept and embrace Islam, accept them and do not fight them

any longer. However, ask them to migrate from their land and come and settle down with the emigrants in Al-Madinah; and inform them that if they do that, they will have the same right as the emigrants, for and against. If they refuse, inform them that will only be like Bedouin Arab Muslims; they will have the same right as other Muslims but they will not have shares from war booty and spoils of war except they engage in Jihad. If they refuse this first offer, then request them to pay tribute, and if they also refuse, then seek Allah's help on them and fight them.

There are other narrations under this section. The majority of scholars bear the opinion of the obligation of starting with calling to Islam for the people who have not received the message of Islam before, and that it is not compulsory for people who already have information about Islam. However, some other scholars opine that it is compulsory whether the people are aware of Islam or not, while some opine that it is not compulsory at all.

As for the assertion that it is prohibited to kill women, children, and the aged except when necessary, that is because of the hadith of Ibn Umar ﷺ reported in Sahihayn and some other collections. He said: A woman was found killed in a battle. The Prophet ﷺ then forbade from killing women and children.

Abu Dawud also reported from the hadith of Anas ﷺ that the Messenger of Allah ﷺ said: Do not kill aged people, or young children, or women. But the chain of its transmission contains Khalid bin Al-Farz, and there are some ill comments about it.

Ahmad, Abu Dawud, An-Nasai, Ibn Majah, Ibn Hiban, Al-Hakim and Al-Bayhaqi also reported from the hadith of Rabaah bin Rabi that the Messenger of Allah ﷺ said:

لاَ تَقْتُلُوا ذُرِّيَّةً وَلاَ عَسِيفاً

Do not kill children and workmen.

Ahmad also reported from the hadith of Ibn Abbas ﷺ that the Prophet ﷺ said: Do not kill children and the people of hermitage. The chain of its transmission contains Ibrahim bin Ismail bin Abi Habibah, who is weak, but Ahmad certified him.

Ahmad reported another hadith, so also Isma'il in his Mustakhraj from the hadith of Kab bin Malik ﷺ, from his uncle, that when the Prophet ﷺ sent to Ibn Abi Al-Huquuq at Khaybar he forbade the people from killing women

and children. And the men of its chain of transmission are men of authentic transmission.

Ahmad and At-Tirmidhi also reported the hadith from the hadith of Samrah with a linked chain of transmission to the Messenger of Allah ﷺ, which At-Tirmidhi authenticated, with the wording: Kill the old people of the polytheists and spear their younger ones. It is said that scholars generally agree upon the prohibition of killing women and children except when that becomes necessary, like when the opponents use them to cover up or when they themselves fight.

Abu Dawud also reported in Al-Maraseel from Ikrimah that the Messenger of Allah ﷺ at the battle of Hunayn passed by a woman who had been killed, he ﷺ then asked: Who killed this woman. A man replied: I did, O messenger of Allah. I captured her and took her behind me on my ride. But when she saw us been defeated, I noticed her trying to pick my sword and kill me, thereupon I killed her." The Messenger of Allah ﷺ did not blame him. At-Tabarani reported it as well in Al-Kabir, but with a linkable chain of transmission.

As for the prohibition of mutilation, that is because of the hadith of Sulayman bin Buraydah, on the authority of his father that was mentioned shortly. It contains the statement of the Prophet ﷺ: ...and do not mutilate. Ahmad and Ibn Majah also reported the like of the hadith from the hadith of Safwan bi n Assaal. The Ahadith under the prohibition of mutilation are many.

As for the prohibition of burning, that is because of the hadith of Abu Hurairah ﷺ that is reported by Al-Bukhari and some other collectors. He said: the Messenger of Allah ﷺ sent us out for a mission and said to us: If you catch so and so person, he mentioned two people by their names, burn them, but when we were about going, he said to us again:

إِنِّي كُنْتُ أَمَرْتُكُمْ أَنْ تُحْرِقُوا فُلانًا وَفُلانًا ، وَإِنَّ النَّارَ لا يُعَذِّبُ بِهَا إِلاَّ اللَّهُ ، فَإِنْ وَجَدْتُمُوهُمَا ، فَاقْتُلُوهُمَا

I asked you to burn so and so persons, but no one has the authority to torment anyone with fire except Allah, if you catch them, only kill them.

As for trees, idols, and properties, Shari'ah has given permission to all that, if there is a benefit in it or the situation calls for it.

As for the prohibition of fleeing from battleground, Qur'an talks directly about that. It says:

وَمَنْ يُوَلِّهِمْ يَوْمَئِذٍ دُبُرَهُ إِلَّا مُتَحَرِّفًا لِقِتَالٍ أَوْ مُتَحَيِّزًا إِلَى فِئَةٍ فَقَدْ بَاءَ بِغَضَبٍ مِنَ اللَّهِ وَمَأْوَاهُ جَهَنَّمُ وَبِئْسَ الْمَصِيرُ

And whoever turns his back to them that day, unless it is a stratagem of war or to retreat to a troop (of his own), he indeed has invited the wrath of Allah upon himself, and his abode is Hell, and worst indeed is that destination.
[Al-Anfaal: 16]

It is also established in Sahihayn and some other collections that fleeing away from battle is from the seven abominations. Moreover, there is no difference of opinion among the scholars about this prohibition in a broad sense, but they differ about what could cause or necessitate fleeing away. Allah, The Most High, grant the permissibility of running back to one's troop, so also the fleeing of strategy. These instances also involve leaving the battlefield but they are not really acts of fleeing away.

As for the fact that it is permissible to invade the unbelievers by night, that is because of the hadith of As-Sab bin Jathamah in Sahihyan ﷺ and some other collections that the Messenger of Allah ﷺ was asked about the unbelievers if invaded at night and their women and children were killed along with them. The Prophet ﷺ replied:

هُمْ مِنْهُمْ

They are from them.

Ahmad, Abu Dawud, An-Nasai and Ibn Majah also reported from the hadith of Salamah bin Al-Akwaa ﷺ. He said: We invaded Hawazin at night in our outing with Abu Bakr, the Prophet ﷺ sent him to lead us.

At-Tirmidhi said about this issue: Some of the people of knowledge opine that invasion by night is permissible, but some others detest it. However, Ahmad and Ishaq in their comments said: It is not wrong to invade the enemy at night.

As for the permissibility of telling lies during war, that is because of what Muslim and some other collectors collected from the hadith of Jabir ﷺ that when the Messenger of Allah ﷺ sent Muhammad bin Maslamah to go and kill Kab bin Al-Ashraf, he said: O messenger of Allah, give me permission.

The Prophet ﷺ replied him: Yes, I have. He, Muhammad bin Maslamah, meant that the Prophet ﷺ should permit him to trick Kab bin Al-Ashraf with a discussion even if were to be a lie, as it occurred in the story. Al-Bukhari reported it as well.

Muslim reported another hadith from the hadith of Ummu Kulthum bint Uqbah ﷺ. She said: I did not hear the Messenger of Allah giving permission for a lie to be told except during wars, or when making reconciliation between people, or in the discussion of a man with his wife and a wife with her husband. However, the lies meant in this hadith is in an indirect references or speeches made in discussion, as well as signals made in the discussions, in any way possible, so that the hadith will not imply plain lies, as said by some of the people of knowledge.

As for the permissibility of making a trick or adopting deceits in a war, that is because of the hadith of Jabir ﷺ in Sahihayn that the Messenger of Allah ﷺ said:

الْحَرْبُ خُدْعَةٌ

War is trick

It is also reported in Sahihayn from the hadith of Abu Hurairah ﷺ that the Messenger of Allah ﷺ called war trick.

Al-Nawawi, while commenting on this issue, said: scholars generally agree that making a trick is permissible in a war with non-believers in any way possible, so far it does not involve breaking a treaty made with them.

باب أَحْكَام الغَنَائِم

Chapter 32.2 Ruling on War Booty



The war booty taken by the army is divided into five; the Imam will take one-fifth of it and keep it for his office use, while the remaining four-fifth will be shared among the army. When sharing the portions that belong to the army, the equestrians among the soldiers will take three shares while any soldier on his feet will have only one, and there is no distinction between the strong and the weak among them; they will all have equal shares according to their state. Also, there is no difference between those who participated in the fighting and those who did not, once the person is present at war. In addition, it is permissible that the Imam gives some of the soldiers additional shares as gifts as he may wish. However, the Imam will take As-Safee – the leader's share of the booty" and will also take his share of the booty as other members of the army. It is also permissible he gives anyone who is present in the sharing something from the booty, as he can also give some people from the war booty to gain their interest into the religion or make them passionate about the religion, if he sees that being necessary. Moreover, if the unbelievers return the properties they took from the Muslims, they will be given back to their owners. It is also prohibited for any soldier to benefit from anything from the booty before it is shared except a meal or fat. It is forbidden for any of them to take anything from the booty before it is shared. The captives of the war are regarded as part of the war booty and it is permissible to either kill them, or take ransom for releasing them, or free them.

Explanation:

I say: As for the assertion that the war booty taken by the army is divided into five; the Imam will take one-fifth of it and keep it for his office use, while the remaining four-fifth be shared among the army, that is because of the word of Allah:

وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ

And know that whatever of war booty that you may gain, verily one-fifth of it is for Allah, and for the messenger ﷺ, and for the near relatives of the

messenger ﷺ, and for the orphans, the poor, and the wayfarer.... [Al-Anfaal: 41]

There are some other verses of the Gracious Qur'an about the matter of the war booty and spoils of war.

Abu Dawud and An-Nasai reported concerning this matter from the hadith of Amrr bin Abasah ﷺ. He said: The Messenger of Allah ﷺ lead us in prayer one day, facing a she-camel from the war booty, making it a screen between him and the passers-by. After the prayer, he took a thread of hair from a side of the she-camel and said:

وَلاَ يَحِلُّ لِي مِنْ غَنَائِمِكُمْ مِثْلُ هَذَا إِلاَّ الْخُمُسَ وَالْخُمُسُ مَرْدُودٌ فِيكُمْ

It is not permissible for me from your booty as little as this, except one-fifth of it, and the one-fifth will also be returned to you.

Ahmad, An-Nasai and Ibn Majah reported the like of this hadith from the hadith of Ubadah bin As-Saamit ﷺ, and Ibn Hajar considered it a sound hadith. Ahmad, Abu Dawud, An-Nasai, Malik and Al-Shafi'i also reported the like of the hadith from the hadith of Amr ibn Shuaib, on the authority of his, from his grandfather; Ibn Hajar also rated sound. The hadith is also reported from the hadith of Jubayr bin Mutim and Al-Urbaadh bin Saariyah ﷺ.

As for the fact that when sharing the portions that belong to the army, the equestrians among the soldiers will take three shares while the soldiers on their feet will take one each, that is because of the narrations that were reported concerning it. Among these narrations is the hadith of Ibn Umar ﷺ in Sahihayn. The collectors of Sahihayn have also reported with different wordings, and some of them have it that the Prophet ﷺ gave the equestrians among the army three shares and the soldiers on their feet only one each. A hadith with that interpretation is also reported in Sahihayn from the hadith of Anas ﷺ, so also, from the hadith of Urwah al-Baariqi ﷺ. Among those narrations also is the report of Ahmad from the hadith of Az-Zubayr ﷺ, and the men of its chain of transmission are men of authentic transmission. Among them also is the hadith of Abu Ruhm ﷺ that is reported by Al-Daraqutni, Abu Yalaa, and At-Tabarani, the hadith of Abu Hurairah ﷺ that is reported by At-Tirmidhi and An-Nasai, and the hadith of Jarir ﷺ that is reported by Muslim and some others. Among these narrations also are the narrations of Utbah bin Abdu that are reported by Abu Dawud, and that of Jabir and Asmaa

bint Yazid ﷺ that are reported by Ahmad. There are other narrations under the section as well.

What is mentioned here is the opinion of the majority of scholars; however, some of the people of knowledge opine that the equestrians among the army will take two shares while those on their feet take one each. These scholars made evidence with the hadith of Mujammi bin Jaariyah that is reported by Ahmad and Abu Dawud. He said: When the messenger of Allah ﷺ shared the booty of the battle of Khaybar he divided it into eighteen portions, and the soldiers were one thousand five hundred in number, among whom three hundred were equestrians. He ﷺ gave each of the riders two shares and those who came on their feet one each.

However, this hadith is weak. Abu Dawud commented about it thus: there is a fault in this hadith; it mentioned that the equestrians were three hundred but they were only two hundred.

As for the fact that the soldiers will have equal shares according to their states without any distinction between the strong and the weak and between those who fought and those who did not, that is because of the hadith Ibn Abbas ﷺ reported by Abu Dawud and Al-Hakim. And it is authenticated by Abu Al-Fath in the book Al-Iqtiraah, with Al-Bukhari's condition of authenticity. He said: The Messenger of Allah shared the booty of the battle of Badr between those who fought and those who did not equally, after some disagreements among them. Allah then revealed the verse:

يَسْأَلُونَكَ عَنِ الْأَنْفَالِ قُلِ الْأَنْفَالُ لِلَّهِ وَالرَّسُولِ فَاتَّقُوا اللَّهَ وَأَصْلِحُوا ذَاتَ بَيْنِكُمْ وَأَطِيعُوا اللَّهَ وَرَسُولَهُ إِنْ كُنْتُمْ مُؤْمِنِينَ

They ask you (O Muhammad ﷺ) concerning the spoils of war. Say: The spoils are for Allah and the messenger. So fear Allah and adjust all matters of difference among you, and obey Allah and His Messenger (Muhammad ﷺ) if you are believer.

Ahmad also reported the like of it from the hadith of Ubadah bin As-Samit ﷺ with the chain of transmission whose men are men of authentic transmission. He also reported it from the hadith of Sad bin Malik ﷺ that he said: O Messenger of Allah, someone will be the most powerful fighter of his group of army and will have the same share of the booty as others, how come? The messenger of Allah ﷺ replied:

ثَكِلَتْكَ أُمُّكَ ابْنَ أُمِّ سَعدٍ وَهَلْ تُرْزَقُونَ وَتُنْصَرُونَ إِلاَّ بِضُعَفَائِكُمْ

Look, O Ibn Ummi Sad's! Is it not by the (prayers of the) weak ones among you, you are been victorious and blessed (with the spoils of war)?

Al-Bukahri reported it also, so also An-Nasai from Musab bin Sad, he said: Sad thought that he was superior to others among his group of army, the Messenger of Allah ﷺ replied him:

هَلْ تُنْصَرُونَ وتُرْزَقُونَ إِلاَّ بِضُعَفَائِكُمْ

Is it not by the (prayers of the) weak ones among you, you are been victorious and blessed (with the spoils of war)?

Ahmad, Abu Dawud, An-Nasai, and At-Tirmidhi also reported the like of the hadith, and At-Tirmidhi authenticated it.

As for the fact that it is permissible that the Imam gives some of the soldiers additional things as gifts, that is because of the hadith reported by Muslim and some other collectors concerning the issue. They reported that the Messenger of Allah ﷺ gave Salamah bin Al-Akwa the share a soldier that came on feet and that of a soldier that came on ride together. Ahmad, Abu Dawud, At-Tirmidhi, and An-Nasai reported another hadith; and al-Mundhiri referred it to Muslim in his book Mukhtasar As-Sunan, that the Prophet ﷺ gave Sad bin Abi Waqaas a share as a gift from the spoils of the battle of Badr.

Moreover, this submission is the opinion of the majority of scholars about this issue; some of them even reported consensus of the scholars about it. However, they differ about, from where should the gifts be taken, is it from the general booty or from the one-fifth belonging to the Imam?

There is a narration concerning giving gifts to the detachment of an army as well, and that is the hadith of Habib bin Abu Maslamah reported by Ahmad, Abu Dawud and Ibn Majah, while Ibn Jaarud, Ibn Hiban and Al-Hakim authenticated it. It is mentioned in the hadith that the Prophet ﷺ in an outing, shared one-fourth of the remaining four portions of the spoils left after deducting one-fifth between the detachment of his army at the commencement of the journey, when he returned he shared one-third of it between them.

Ahmad, Ibn Majah, and At-Tirmidhi reported the like of it from the hadith of Ubadh bin Saamit, and Ibn Hiban authenticated it.

Ahmad and Abu Dawud reported another hadith from the hadith of Man bin Yazid ﷺ, which At-Tahawi authenticated. He said: I heard the Messenger of Allah ﷺ saying:

لاَ نَفْلَ إِلاَّ بَعْدَ الْخُمُسِ

There is no gift from the booty except after deducting one-fifth.

In Sahihayn from the hadith of Ibn Umar ﷺ, it is reported that the Messenger of Allah ﷺ used to give some of the soldiers in the detachment presents, besides the general shares for the whole army, but the one-fifth used to be deducted from all the spoils at a time . It is also reported in Sahihayn that the Prophet ﷺ gave each soldier of a detachment one she-camel. There are many other narrations under this section.

As for the assertion that the Imam will take As-Safi – the leader's share of the booty – as well as his share of the booty as other members of the army, that is because of the hadith of Yazid bin Abdullah bin Ash-Shikhir reported by Abu Dawud and An-Nasai. Abu Dawud and al-Mundhiri were silent about its state, that is, about whether it is authentic or not. He said: When we were at al-Marbad a man entered unto us and was holding a piece of leather, we took the piece of leather from him and read; it read:

مِنْ مُحَمَّدٍ رَسُولِ اللَّهِ إِلَى بَنِي زُهَيْرِ بْنِ أُقَيْشٍ «إِنَّكُمْ إِنْ شَهِدْتُمْ أَنْ لاَ إِلَهَ إِلاَّ اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ وَأَقَمْتُمُ الصَّلاَةَ وَآتَيْتُمُ الزَّكَاةَ وَأَدَّيْتُمُ الْخُمُسَ مِنَ الْمَغْنَمِ وَسَهْمَ النَّبِيِّ -صلى الله عليه وسلم- وَسَهْمَ الصَّفِيِّ أَنْتُمْ آمِنُونَ بِأَمَانِ اللَّهِ وَرَسُولِهِ» . فَقُلْنَا مَنْ كَتَبَ لَكَ هَذَا قَالَ رَسُولُ اللَّهِ -صلى الله عليه وسلم-.

This message is from Muhammad, the Messenger of Allah ﷺ to the clan of Zuhayr bin Qays. If you bear witness that sincere worship is due to none but Allah alone and that Muhammad ﷺ is the Messenger of Allah. And you

offer Salah, pay Zakat, and remit one-fifth of your war booty, the share of the Messenger of Allah from your spoils of war, and the share of the leader, you are secured with the security of Allah and His Messenger ﷺ. We then asked him: Who wrote this? He replied: The Messenger of Allah ﷺ.

Al-Mundhiri said: Some of the collectors collected this hadith from the path of Yazid bin Abdullah also and the man that brought the piece of leather was identified as An-Namr bin Tawlab.

Abu Dawud reported another hadith concerning this issue from Ash-Shabi, but with a Mursal chain of transmission. He said: The Prophet ﷺ used to have the leader's share from the spoils of war, called As-Safi, if he wanted he might choose a male slave, and if he wanted he might choose a female one, and sometimes he might decide to take a horse. He would do that before one-fifth of the war booty is deducted. He also reported the like of the hadith from Ibn Awn with a Mursal chain of transmission as well.

Ahmad and At-Tirmidhi also reported from the hadith of Ibn Abbas ﷺ, and At-Tirmidhi rated it sound, that the Messenger of Allah ﷺ gave his sword (that was from his leader's share) as a gift to someone at the battle of Badr.

Abu Dawud also reported that 'A'ishah ﷺ said: Safiyyah ﷺ was a leader's share taken by the Prophet ﷺ from a booty. He reported the like of this from Anas ﷺ as well. However, this narration contradicts what is reported in Sahihayn and some other collections from the hadith of Anas ﷺ also, that Safiyyah first belonged to Dihyah Al-Kalbi ﷺ, but later taken by the messenger of Allah ﷺ. In a narration, it is reported that the Prophet ﷺ bought her from him with seven Arus.

As for the fact that the Imam can give anyone present during the sharing from the booty, that is because of the hadith of Ibn Abbas ﷺ and other than him from the companions ﷺ, that someone asked concerning women and slaves, did they used to have specific shares from the booty if they participated in the war? Ibn Abbas, in his response, said: They did not use to have specific shares from the booty; they only used to be compensated from the general booty. In another narration, it is reported that he said: Women used to follow the Messenger of Allah ﷺ to the battle in order to take care of the wounded people, and would be compensated from the spoils of war. As for the share, they did not use to given shares from the spoil.

Abu Dawud, Ibn Majah and At-Tirmidhi also reported from the hadith of Umayr, Abu Al-Lahm's slave boy, that he participated in the battle of Al-Khaybar with his master, and the Prophet ﷺ ordered that he should be given some goods from the booty.

Ahmad, Abu Dawud and An-Nasai reported another hadith from the hadith

of Hashraj bin Ziyaad from his paternal grandmother that she was among the six women who followed the Prophet ﷺ to the battle of Khaybar, and that when the Messenger of Allah ﷺ was informed about their presence he sent for them. She added: when we got to him ﷺ we noticed he was angry and we knew he was not pleased with our coming. He ﷺ asked us: With whom did you come, and with whose permission did you leave your places? We replied: O messenger of Allah, we have come to spin our hairs, and to help in the way of Allah as well; we have some drugs with us to take care of wounds, and we hope to help the soldiers pick up their arrows and provide drinks. He Prophet ﷺ then said to us: "You can get up", and we went away from him until the end of the battle when Allah has given them victory over the enemy, he ﷺ then gave us shares from the booty as he gave to men. He asked - Hashraj bin Ziyaad - her: O grandmother, what was the thing that was given to you? She replied: Dates.

The chain of transmission of this hadith contains an unknown narrator, Hashraj.

Al-Qataabi commented about it thus: the chain of transmission of this hadith is weak; therefore, it cannot be used as a proof.

At-Tirmidhi reported another hadith from al-Awzaee, with a Mursal chain, that the Prophet ﷺ shared with the children from the booty for the battle of Khaybar.

The hadith of Hashraj is weak, as mentioned shortly, and this one is Mursal, a kind of weak hadith; therefore, it cannot be said that they contradict other evidences earlier mentioned, because those ones are authentic, and a weak hadith cannot challenge an authentic one. Nevertheless, some of the scholars understood the sharing mentioned in this hadith to mean compensation the Prophet ﷺ used to offer to women that participated in the war, in a way of marrying the narrations together.

Moreover, scholars differ about this issue, but the majority of scholars are of the opinion that no specific shares should be given to women and children, rather; they should be compensated if the Imam sees it necessary.

As for the fact that the Imam can give some people from the war booty to gain their interests into the religion or make them have passion for the religion, that is because of the hadith of Anas ﷺ in Al-Bukhari and some other collections. He ﷺ reported that the Prophet ﷺ shared the war booty between the noble men of Quraysh in order to make them passionate about the religion, and he did not give the Ansar and the Muhajirun.

It is also established in As-Sahih from the hadith of Ibn Mas'ud and some other companions ﷺ that the Prophet ﷺ gave Al-Aqra bin Habis a hundred

heads of camels, and Uyaynah the like of it; he also gave some noble people of Arab. This event is very popular; its details are mentioned in the books of history. The noble people of Quraysh mentioned in the hadith are the aged people of Quraysh that embraced Islam on the day of the Conquest of Makkah, the like of Abu Sufyan bin Harb, Suhayl bin Amr, Huwaytib bin Abdulizah, Hakim bin Hizaam, and Sufwan bin Umayyah.

As for the fact that if unbelievers return the properties they took from the Muslims back to them, they will be given to their initial owners, that is because of the hadith of Imran bin Husayn ﷺ collected by Muslim and some other collectors. He ﷺ reported that the unbelievers took away Al-Adhbaah - the Prophet's camel - and a woman from the Muslims escaped with it from their captivity. The camel was then returned to the Messenger of Allah ﷺ even though the woman vowed that she would slaughter it in sacrifice to Allah if she was saved, the Prophet ﷺ then said to her:

لاَ وَفَاءَ لِنَذْرٍ فِي مَعْصِيَةِ اللهِ وَلاَ فِيمَا لاَ يَمْلِكُ الْعَبْدُ

There is no fulfilment of a vow made in disobedience to Allah or over what one does not possess.

Al-Bukhari and some others also collected from Ibn Umar ﷺ that a horse that belonged to him missed its way and the Muslims enemy took it; and that when Muslims fought them, they found it with them and it was returned back to him. All that happened and the Messenger of Allah ﷺ was still alive. It was also reported that one of Ibn Umar's male slaves ran away and settled at Rome, and that when Muslims fought Rome he was caught; Khalid bin Al-Walid then returned him back to Ibn Umar and that was after the demise of the Prophet ﷺ.

In another narration collected by Abu Dawud, it is reported that a slave boy belonged to Ibn Umar ﷺ flew to the enemy of the Muslims and when the Muslims fought them, the Messenger of Allah – returned the slave boy to him, and he was not shared with the booty.

Al-Shafi'i and a large number of the people of knowledge opine that the Muslims enemy does not have any right to what they caught from Muslims. They are of the opinion that the owner of any property taken by the enemy can take it back anytime during any other battle the Muslims have with them, and that he can take it before or after the booty is shared. However, it is reported from Ali, Az-Zuhri and Amrr bin Dinar that the properties will not be returned to

their owners but be shared with the booty between the army. Another opinion is reported from Umar, Sulayman bin Rabia, Ataa, Al-Layth, Malik, Ahmad and some others, and that is, if the owner is able to find his property before the booty is shared, he has a right to it, but if he finds it after sharing the booty, he will only take its worth and not his exact property. Al-Daraqutni reported the like of this ruling from the hadith of Ibn Abbas ﷺ from the Messenger of Allah ﷺ but the chain of its transmission is very weak. That is also the opinion of Al-Hadawiyah about this issue, it is also mentioned as the opinion of the seven jurists.

As for the assertion that it is forbidden for any soldier to benefit from anything from the booty before it is shared except food or fat, that is because of the of Ruwayfi bin Thabit, reported by Ahmad, Abu Dawud, ad-Darimi, At-Tahawi and Ibn Hiban. They all reported that the Messenger of Allah ﷺ said:

لاَ يَحِلُّ لِمُؤمِنٍ يُؤمِنُ بِاللَّهِ وَاليَوْمِ الآخِرِ أَنْ يَتَنَاوَلَ مَغْنَمًا حَتَّى يُقْسَمَ , وَلاَ يَلْبَسُ ثَوْبًا مِنْ فَيْءِ المُسْلِمِينَ حَتَّى إِذَا أَخْلَقَهُ رَدَّهُ فِيهِ وَلاَ أَنْ يَرْكَبَ دَابَّةً مِنْ فَيْءِ المُسْلِمِينَ حَتَّى إِذَا أَعْجَفَهَا رَدَّهَا فِيهِ

It is not permissible for anyone who believes in Allah and the Last Day to take anything from the booty for sale (or for any other uses) before it is shared, or take a wear from the booty belonging to the Muslims and does not return until it wears out. So also, it is not permissible for him to take an animal for ride from the spoils of war belonging to the Muslims and does not return it until it has become lean.

The chain of transmission of this hadith contains Muhammad bin Ishaq, and there are some ill comments about him, and the people of knowledge popularly know the comments. Nevertheless, Ibn Hajar said about it: The men of its chain of transmission are trustworthy. In another comment, he said: The chain of its transmission is good.

Al-Bukhari collected another hadith concerning the issue from Ibn Umar ﷺ, he said: We used to find honey and grapes during wars and we will eat it without taking them out as part of the booty. Abu Dawud added in his narration: and one-fifth of the booty did not use to be deducted from it. Ibn Hiban authenticated this addition of Abu Dawud.

Abu Dawud and Al-Bayhaqi reported another hadith from Ibn Umar ﷺ as well, and Al-Bayhaqi authenticated it, he said: Some soldiers got some foods and honey during a battle at the time of the Messenger of Allah ﷺ and one-

fifth of the booty was not taken from it. Muslim and some other collectors collected another hadith from the hadith of Abdullah bin Al-Mugaffal ﷺ. He said: I saw a sack containing some grease at the battle of Khaybar, I rushed to it and said: I will not give anyone from this food today, I then looked around, I saw the Messenger of Allah ﷺ laughing at me.

Abu Dawud, Al-Hakim, and Al-Bayhaqi reported another hadith from Ibn Abi Awfa ﷺ. He said: We got some foods at the battle of Khaybar, and anyone among us who wanted to eat would just come and take what would suffice him and leave. Abu Dawud reported another hadith also from al-Qasim, the freed slave of Abdur-Rahman, from some of the companions of the Prophet ﷺ. They said: We used to find locust in some of the battles we fought, and we would eat it without it being part of the booty to be shared. Sometimes, we would eat it to the extent that when we returned home some parts of our body would be swollen from it. However, some of the scholars have spoken about that Al-Qasim; the hadith is therefore not authentic.

The majority of scholars have the opinion that it is permissible for the soldiers to benefit from the food and grease packed for animals without that been considered as part of the booty to be shared, whether the Imam gave permission for it or not. However, Az-Zuhree, in his own opinion, said: The soldiers should take nothing, whether it is food or not, while Sulayman bin Musa said: They can take from it except the Imam forbade them from doing so.

As for the prohibition of taking from the booty before sharing it, that is because of the hadith of Abu Hurairah ﷺ that is reported in Sahihayn and some other collections concerning the slave boy that was killed by an arrow shot and the companions said in his respect: How successful was he, O messenger of Allah? The Messenger of Allah ﷺ then said:

كَلاَّ وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ إِنَّ الشَّمْلَةَ لَتَلْتَهِبُ عَلَيْهِ نَارًا أَخَذَهَا مِنَ الْغَنَائِمِ يَوْمَ خَيْبَرَ لَمْ تُصِبْهَا الْمَقَاسِمُ

Certainly not, by Whom Muhammad's soul belongs; the cloak he took on the day of the battle of Khaybar before the booty was shared would catch fire on him (on the Day of Judgment).

On hearing this, people were shocked; a man then went and came with one or two shoelaces and said: O messenger of Allah, I took this on the day of the battle of Khaybar. The messenger of Allah ﷺ then said:

شِرَاكٌ مِنْ نَارٍ أَوْ شِرَاكَانِ مِنْ نَارٍ

A shoelace from hell or two shoelaces from hell.

Muslim reported another hadith concerning this issue from the hadith of Umar bin Al-Khattab ﷺ. He said: On the day of Khaybar, some of the companions of the Prophet ﷺ were killed and people were saying, this person is a martyr and that other person is a martyr, until they passed by someone, they said: this man is also a martyr. The messenger of Allah ﷺ then said concerning the man:

كَلاَّ إِنِّي رَأَيْتُهُ فِي النَّارِ فِي بُرْدَةٍ غَلَّهَا أَوْ عَبَاءَةٍ

Certainly not, I saw him in hell because of a cloak or a gown he took before the sharing.

Al-Bukahri and some other collectors also reported that Ibn Umar ﷺ said: A man called Karkarah was in charge of the Prophet's luggage at a battle. When he died the Messenger of Allah ﷺ said:

هُوَ فِي النَّارِ

He will enter hell (to receive the punishment of his bad acts, but will be taken out to paradise later).

On hearing this, some people went to see what necessitated that, and they found a cloak with him which he took from the booty before it was shared, and Allah, The Most Gracious and The Most Exalted, has said in His Book:

وَمَنْ يَغْلُلْ يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَامَةِ

Whoever does Guluul - to take from the booty illegally - shall come forth with what he took on the Day of Resurrection [Ali 'Imran: 161]

It is also established in Al-Bukhari and some other collections from the hadith of Abu Hurairah ﷺ that the Prophet ﷺ said:

لاَ أُلْفِيَنَّ أَحَدَكُمْ يَوْمَ القِيَامَةِ عَلَى رَقَبَتِهِ شَاةٌ لَهَا ثُغَاءٌ، عَلَى رَقَبَتِهِ فَرَسٌ لَهُ حَمْحَمَةٌ

I will find one of you on the Day of Resurrection carrying a bleating sheep on his neck, and another person carrying a neighing horse on his neck.

On this issue, Al-Nawawi reported consensus of the scholars; they all agreed that taking something from the booty before sharing it is one of the greatest sins. In addition, Abu Dawud, Al-Hakim and Al-Bayhaqi collected from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather, that the Messenger of Allah ﷺ, Abu Bakr and Umar ﷺ burnt the properties of those that took something from the booty before it was shared, and they also beat the people. However, its chain of transmission contains Zuhayr bin Muhammad Al-Khurasaani, who is weak.

Ahmad, Abu Dawud, At-Tirmidhi, Al-Hakim and Al-Bayhaqi collected another hadith from the Umar bin al-Khataab ﷺ on the matter. He said: the Messenger of Allah ﷺ said: If you get hold of anyone who has stolen from the booty before it was shared, you should burn his property and flog the person. However, the chain of transmission of this hadith contains Salih bin Muhammad bin Zaidah; and not only one of the people of knowledge have given ill comments about him, which necessities the weakness of the hadith.

As for the fact that the prisoners are part of the booty to be shared, there is no difference of opinion about that among the people of knowledge.

As for the fact that the captives can either be killed, or released with ransom, or freed without any ransom, that is because of the word of Allah, The Most High:

مَا كَانَ لِنَبِيٍّ أَنْ يَكُونَ لَهُ أَسْرَى حَتَّى يُثْخِنَ فِي الْأَرْضِ

It is not for a Prophet that he should have prisoners of war (and free them with ransom) until he had made great establishment (of the religion) on land. [Al-Anfaal: 67]

And His word, The Most High:

فَإِمَّا مَنًّا بَعْدُ وَإِمَّا فِدَاءً

Either generously frees them without ransom or with ransom [Muhammad: 4]

In addition, it is established from the practice of the Messenger of Allah ﷺ killing the prisoners of wars, so also taking of ransom, as well as setting them free without any ransom. These practices are well established from him, reported in successions, and on different occasions. For instance, on the day of the battle of Badr, he killed some of the prisoners of war and took ransom to release some other ones.

Al-Bukhari collected from the hadith of Jubayr bin Mutim ﷺ that the Prophet ﷺ on the day of the battle of Badr said:

لَوْ كَانَ الْمُطْعِمُ بْنُ عَدِيٍّ حَيًّا ، ثُمَّ كَلَّمَنِي فِي هَؤُلَاءِ النَّتْنَى لَتَرَكْتُهُمْ لَهُ

If Mutim bin Adyy were to be alive and interceded for this fetid people to be released, I would have released them for him.

In Muslim, it is reported from the hadith of Anas ﷺ that when the Prophet ﷺ got hold of the eighty people that descended on him and his companions from the mountains of At-Taneem during a dawn prayer, with the aim of killing him and his companions, he ﷺ set them free. Allah, The Most Gracious and The Most Exalted, then revealed the verse:

وَهُوَ الَّذِى كَفَّ أَيْدِيَهُمْ عَنْكُمْ وَأَيْدِيَكُمْ عَنْهُمْ بِبَطْنِ مَكَّةَ مِنْ بَعْدِ أَنْ أَظْفَرَكُمْ عَلَيْهِمْ

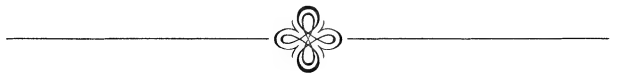
And it is He Who withheld their hands from you and your hands from them in the midst of Makkah, after He had made you victorious on them [Al-Fath: 24].

Moreover, the majority of the scholars are of the opinion that the right belongs to the Imam to do whatever he finds suitable for Islam and the Muslims concerning the prisoners, he may kill them, take ransom for releasing them, or free them without any ransom.

However, Az-Zuhri, Mujahid and some other groups of scholars opine that it is not permissible for the Imam to take ransom for releasing the prisoners who are unbelievers. Furthermore, it is reported from Al-Hasan and Ataa that it is not permissible to kill the prisoners of war, rather; they should be made to choose between the payments of ransom and been set free without any ransom. Also, it is reported from Malik that it is not permissible to free them without ransom, while the report from Abu Hanifah says: it is not permissible to free them, whether with or without ransom.

باب أَحْكَام الأَسِير والجَاسُوس والهدنَة

Chapter 32.3 Rulings Concerning the Captives and Spies



It is permissible to enslave an Arab person, as it is permissible to kill a spy if caught. If a war-like or belligerent non-Muslim embraces Islam before the Muslims get hold of him, his properties are safe. In addition, if a non-Muslim slave embraces Islam, he automatically becomes a free person. If a land is taken over by the Muslims, its affairs become the rights of the Imam, he can value it and do anything he finds suitable with the worth, or leave it to be shared between the Muslims; those that participated in the war from which it was taken-over and those that did not. Furthermore, whomever any of the Muslims secures, or comes into the Muslim land under the security of any Muslim is safe, and a messenger to the Muslim land from the unbeliever is like a secured person, he is safe as well. It is permissible to make peaceful reconciliation with non-Muslims even if it necessitates giving conditions for such agreement, but the expiry time for the reconciliation must not be more than ten years. However, it is permissible to make permanent reconciliation on the condition that the non-Muslims will be paying tribute to the Muslims. Lastly, the polytheists and the people of the book must not be allowed to live in the Arabian Peninsula.

Explanation:

I say: As for the fact that it is permissible to enslave an Arab person, that is because of the hadith of Abu Hurairah ﷺ that is collected in Sahihayn and some other collections. He reported that 'A'ishah ﷺ was having a woman captive with her from Taymi tribe, the Messenger of Allah ﷺ said to 'A'ishah in her respect:

أَعْتِقِيهَا فَإِنَّهَا مِنْ وَلَدِ إِسْمَاعِيلَ

Free her, verily; she is from the descendant of Ismail.

Al-Bukhari and some other collectors also collected that when the delegation of Hawazin tribe came to ask the Messenger of Allah ﷺ to return their

properties and the prisoners of war the Muslims took from them, the Prophet ﷺ said:

أَحَبُّ الْحَدِيثِ إِلَيَّ أَصْدَقُهُ ، فَاخْتَارُوا إِحْدَى الطَّائِفَتَيْنِ : إِمَّا السَّبْيُ ، وَإِمَّا الْمَالُ

The most beloved talks to me is the truth of them, choose either of the two things; the property or the prisoners.

It is also reported in Sahihayn and some other collections from the hadith of Ibn Umar ﷺ that Juwayriyah bint al-Harith ﷺ was from the prisoners of war of Bani Mustalaq. She then wrote an agreement to free herself from captivity on the condition to pay certain amount of money. The Messenger of Allah ﷺ then proposed to marry her on the condition to pay off the money on her behalf. When the Prophet ﷺ finally married her, the companions ﷺ said: These people – the prisoners of war with them - are now in-laws of the Messenger of Allah ﷺ. They then released the prisoners from her tribe with them. Ahmad also reported it from the hadith of 'A'ishah ﷺ .

The majority of scholars are of the opinion that it is permissible to enslave an Arab person, and it is mentioned in Al-Bahr as the opinion of Al-Itrah as well. However, the Hanafiyyah School of Thought bear the opinion that the Arab polytheists caught at war either should embrace Islam or be killed and that they should not be taken as prisoners of war. They made evidence with the word of Allah:

فَإِذَا انْسَلَخَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

And when the sacred months (the 1st, 7th, 11th, and 12th months of the Islamic calendar) have passed, then kill the polytheists wherever you find them, and capture them and besiege them, and lie in wait for them in each and every ambush. But if they repent and perform As-Salaat and give az-Zakat, then leave their way free. Verily, Allah is Oft-Forgiving, Most Merciful. [At-Tawbah: 5].

It is not hidden that the verse does not point to their claim, and even if it is assumed that the verse is applicable to the issue and the evidence for their claim

is contained in it, the practice of the Messenger of Allah ﷺ has limited the scope of the verse. In addition, the Qur'an has given the choice between freeing the prisoners of war and taking ransom for releasing them. Allah says:

فَإِمَّا مَنًّا بَعْدُ وَإِمَّا فِدَاءً

Either generously free them without ransom or with ransom [Muhammad: 4]

And the Qur'an did not distinguish between the Arabs and non-Arabs.

They also made evidence with the report of Al-Shafi'i and Al-Bayhaqi that the Prophet ﷺ said on the day of Hunayn: If it were permissible to enslave Arabs, I would have resulted to enslavement today. However, the chain of transmission of this hadith is very weak. At-Tabarani also reported it with another chain of transmission, but its chain of transmission contains Yazid bin Iyaadh who is worst than Al-Waqidi that is present in the chain of transmission of the first report. Moreover, Al-Hadawiyah is of the opinion that the non-permissibility of enslaving the Arabs is only limited to the men among them, and that it is permissible to enslave the women among them. This opinion is also not correct also because the Messenger of Allah ﷺ took ransom on behalf of some Arab men at the battle of Badr and that is a form of enslavement.

As for the permissibility of killing spies, that is because of the hadith of Salamah bin Al-Aqwa ﷺ that is reported by Al-Bukhari and some other collectors. He said: A spy came to the camp of the Messenger of Allah ﷺ while he was on a journey, the spy sat with some of the companions of the Prophet ﷺ involving them in discussions and later sneaked away. The Prophet ﷺ then said:

اطْلُبُوهُ وَاقْتُلُوهُ

Find him and kill him

He added: I was the first among those who went for him, I got him and then killed him; the Messenger of Allah ﷺ then gave me his belongings.

There is agreement among the scholars about the permissibility of killing a spy from the enemies that are at war with the Muslims.

As for the non-Muslims under Muslim rule and those under peaceful agreement with the Muslims spying Muslims, Malik and Al-Awzai said concerning that: The agreement between them and the Muslims will break immediately they do that with the Muslims.

Ahmad and Abu Dawud reported from the hadith of Furaat bin Hayyaan ﷺ that the Prophet ﷺ ordered that he should be caught and killed when Abu Sufyaan sent him as a spy to the Prophet ﷺ in Al-Madinah. At the time, he has a bosom friend from the Ansar, so, when he passed by some group of the Ansar, he said to them: I am a Muslim. Someone from them then went to the Messenger of Allah ﷺ and said: O Messenger of Allah, Furaat bin Hayyaan claimed to have embraced Islam. The Messenger of Allah ﷺ then said: There are people among you whom we leave to their faith, Furaat bin Hayyan is among them.

However, the chain of transmission this hadith contains Abu Hamaam Ad-Dallaal, Muhammad bin Muhabbab, the narrator that reported the hadith from Sufyan in the chain, and his hadith cannot be used as a proof. But Bushr bin As-Sariyy Al-Basari also reported the hadith from Sufyan in another version of the hadith, and he is a reliable narrator, Al-Bukhari and Muslim agreed upon the fact that his hadith can be used as evidence. In addition, the narrator who narrated the hadith from Sufyan Ath-Thawri in this version, Abbaad bin Al-Azraq Al-Abbadaniyy is also reliable narrator.

As for the fact that if a war-like or belligerent non-Muslim embraces Islam before the Muslims get hold of him, his properties are safe, that is because of the hadith of Sakhr bin Aylah that the Prophet ﷺ said Whoever accepts Islam has a right to his possessions, the landed properties and the other wealth. Ahmad and Abu Dawud reported the hadith, and its chain of transmission contains reliable narrators. Another version of the hadith has it that: If any groups of people accept Islam, their properties and life are safe.

Abu Yalaa also reported from the hadith of Abu Hurairah ﷺ that the Messenger of Allah ﷺ said: Whoever embraces Islam and possesses any properties, owns his properties in Islam. However, Ibn Adyy claimed that this hadith is weak because of the presence of Yaasin bin Az-Ziyaat, the narrator of the hadith from Abu Hurairah ﷺ in the chain of its transmission. However, Al-Bayhaqi claimed that the hadith is reported from Ibn Abi Mulaykah and Urwah with Mursal chains of transmission, and that the Mursal report of Urawah is collected by Ibn Mansur with its chain of transmission containing reliable narrators. And it reads: When the Messenger of Allah ﷺ besieged

Bani Quraydha, Thalabah and Asid, the two sons of Sayah, embraced Islam; he ﷺ then protected their wealth and their little children because of their Islam.

Among the Ahadith that point to the correctness of the opinion we tried to establish here is the authentic hadith that is reported from the Prophet ﷺ with various versions, that he ﷺ said:

إِذَا قَالُوهَا عَصَمُوا مِنِّي دِمَاءَهُمْ وأَمْوَالَهُمْ إِلَّا بِحَقِّهَا

If they profess it (Lailaha illa Allah), they have saved their lives and wealth from me.

Summarily, the majority of scholars are of the opinion that if a war-like unbeliever willingly accepts Islam, he has a right to all the properties he possessed before his Islam; there is no difference between someone who accepts Islam in a Muslims land and someone who accepts it in a non-Muslims land.

As for the fact that if a slave accepts Islam he automatically becomes a free person, that is because of the hadith of Ibn Abbas ﷺ that is collected by Ahmad and Ibn Abi Shaybah. He ﷺ reported that the Messenger of Allah ﷺ manumitted all the slaves of the polytheists that came out to him on the day of the battle of Taaif. Said bin Mansur also reported the hadith with a Mursal chain of transmission. Concerning this issue, scholars used to mention the case of Abu Bakrah where he dangled down a castle in Taaif.

Abu Dawud reported another hadith in relation to this issue from Ash-Shabi, on the authority of a man from Thaqif, he said: We asked the Messenger of Allah ﷺ to return Abu Bakrah to us, and he was our slave boy but accepted Islam before us. The messenger of Allah ﷺ replied us: No, Allah has freed him from you, and His Prophet (ﷺ) also did.

Abu Dawud and At-Tirmidhi also collected concerning the issue from the hadith of Ali ﷺ, and At-Tirmidhi authenticated it. He said: Two slave men of Quraysh came out to the Messenger of Allah ﷺ at Al-Hudahybiyah on the day of the treaty of Al-Hudaybiyah before the treaty. The masters of those slave men then wrote a letter to the Messenger of Allah ﷺ and it read: O Muhammad, these people have not come to you in desire of your religion, they have only fled away from slavery. Some of the people said: O messenger of Allah, what they said is true, return them back to their masters. The Messenger of Allah ﷺ on hearing that got angry and said:

مَا أُرَاكُمْ تَنْتَهُونَ يَا مَعْشَرَ قُرَيْشٍ حَتَّى يَبْعَثَ اللَّهُ عَلَيْكُمْ مَنْ يَضْرِبُ رِقَابَكُمْ عَلَى هَذَا

O people of Quraysh, I do not see you desisting from this request until Allah will send to you who will destroy you because of this request.

Ali ﷺ added: The Prophet ﷺ refused to release them to the Quraysh, he said to them:

هُمْ عُتَقَاءُ اللَّهِ عَزَّ وَجَلَّ

They are manumitted slaves of Allah, The Most Gracious and The Most Exalted.

Abu Dawud collected another hadith from the path of Abu Sa'id Al-Aashim, he said: The ruling of the Messenger of Allah ﷺ is that if a slave man comes and embraces Islam before his master, the slave will be freed with his Islam. However, if the master embraces Islam first and later comes the slave, the master will have the right to own him again as his slave. However, the hadith is Mursal.

As for the fact that if a land is taken over by the Muslims its affair is left to the Imam and he can do any of the things mentioned in the summary with it, that is because the Messenger of Allah ﷺ shared the land of Quraydha and that of An-Nadhir. He shared them between the soldiers that participated in the war. He also shared half of Khaybar land between the Muslims and left the other half for taking care of the delegations that come to Muslim land, general Muslims affairs, and representatives sent to Muslim land. Ahmad and Abu Dawud reported it from the hadith of Bishr bin Yasaar from someone from the companions of the Prophet ﷺ. Abu Dawud also reported the like of it from the hadith of Sahal bin Abi Hathmah ﷺ.

Another evidence for the fact that a take over land can be left for general Muslim use is the fact that the Muslim army among the companions ﷺ left some of the lands they took over from non-believers for the Muslims to benefit from its produce. Moreover, what is mentioned here concerning this issue is the opinion of the majority of the companions ﷺ and those that came after them. It is also the practice of the rightly guided caliphs after the

Prophet ﷺ. Muslim and some other collectors also reported from the hadith of Abu Hurairah رضي الله عنه that the Messenger of Allah ﷺ said:

أَيُّمَا قَرْيَةٍ أَتَيْتُمُوهَا وَأَقَمْتُمْ فِيهَا فَسَهْمُكُمْ فِيهَا وَأَيُّمَا قَرْيَةٍ عَصَتِ اللَّهَ وَرَسُولَهُ فَإِنَّ خُمُسَهَا لِلَّهِ وَلِرَسُولِهِ ثُمَّ هِيَ لَكُمْ

Any land you enter and you are able to establish yourself without fighting its people; you will all have equal portions in the sharing of the spoils taken. But any place you enter and the people disobey Allah and His Prophet ﷺ and you do not gather the booty until you fight them, one-fifth of it is for Allah and His Messenger ﷺ and the remaining portions will be shared among you.

As for the fact that whomever any Muslim secures, or comes into the Muslims land under the security of any Muslim is safe, that is because of the hadith of Ali رضي الله عنه that is reported by Ahmad, Abu Dawud, An-Nasai and Al-Hakim that the Prophet ﷺ said:

ذِمَّةُ الْمُسْلِمِينَ وَاحِدَةٌ يَسْعَى بِهَا أَدْنَاهُمْ

There is no difference in the securities offered by the Muslims (to non-Muslims to live in their land), it is rather the same, even that which is offered by the list of them.

Ahmad, Abu Dawud, and Ibn Majah reported the hadith from the hadith of Amr ibn Shuaib, on the authority of his father, from his grandfather, from the Messenger of Allah ﷺ, with the wording:

يَدُ الْمُسْلِمِينَ عَلَى مَنْ سِوَاهُمْ تَتَكَافَأُ دِمَاؤُهُمْ وَيُجِيرُ عَلَيْهِمْ أَدْنَاهُمْ وَيَرُدُّ عَلَيْهِمْ أَقْصَاهُمْ وَهُمْ يَدٌ عَلَى مَنْ سِوَاهُمْ

Muslims are one against their enemy and they are equal in their persons and in the worth of the blood money. The security offers by the list of them is the same as that which is offered by the notable, and the booty gathered by the list people

among them is as beneficial to the Muslims as the one gathered by the notables among them.

Ibn Hiban reported it as well, but with a lengthier version than this, in his book As-Sahih from the hadith of Ibn Umar ﷺ. Ibn Majah also reported it from the hadith of Maqal bin Yasaar, but shorter than the version quoted here. The wording is:

الْمُسْلِمُونَ يَدٌ عَلَى مَنْ سِوَاهُمْ وَتَتَكَافَأُ دِمَاؤُهُم

Muslims are one against their enemy, and they are equal in the worth of the blood money.

Muslim also collected it from the hadith of Abu Hurairah ﷺ with the wording:

ذِمَّةُ الْمُسْلِمِينَ وَاحِدَةٌ يَسْعَى بِهَا أَدْنَاهُمْ فَمَنْ أَخْفَرَ مُسْلِمًا فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ

There is no difference in the securities offered by the Muslims (to non-Muslims to live in their land), it is rather the same, even that which is offered by the list of them, and whoever breaks such agreement made by a Muslim, may the curse of Allah be upon him, and that of the angels and mankind.

It is also reported in Sahihayn from the hadith of Ali ﷺ, while Al-Bukhari reported it alone from the hadith of Anas ﷺ. There are other Ahadith under this section.

In summary, the people of knowledge agree that whoever any Muslim offers to secure is safe. Ibn Al-Mundhir said: The people of knowledge agree upon the permissibility of a Muslim woman securing any non-Muslim.

As for the slave, the majority of scholars are of the opinion of the permissibility of him offering security to any non-Muslim. But as for an immature person, Ibn Al-Mundhir said: The people of knowledge agree that it is not permissible for an under-aged to offer security to a non-Muslim. And for an insane person, it is not permissible without any difference of opinion about it among the scholars.

As for the fact that a messenger sent to the Muslim land from non-Muslims

land is safe, that is because of the hadith of Ibn Mas'ud ﷺ that is reported by Ahmad, Abu Dawud, An-Nasai, and Al-Hakim that the Messenger of Allah – said to the two messengers of Musaylamah:

لَوْ كُنْتُ قَاتِلاً رَسُولاً لَقَتَلْتُكُمَا

If I were to kill a messenger, I would have killed you both.

Ahmad and Abu Dawud also reported it from the hadith of Nuaym bin Masuud Al-Ashjai that the Messenger of Allah said to them:

أَمَا وَاللَّهِ لَوْلاَ أَنَّ الرُّسُلَ لاَ تُقْتَلُ لَضَرَبْتُ أَعْنَاقَكُمَا

By Allah, were it not that messengers are not killed, I would have beheaded the two of you.

Abu Dawud, An-Nasai, and Ibn Hiban reported another hadith concerning this issue, and Ibn Hiban authenticated it. And that is the hadith of Abu Raafi when the Quraysh sent him to the Messenger of Allah ﷺ. It is reported that he ﷺ said to him:

إِنِّي لاَ أَخِيسُ بِالْعَهْدِ وَلاَ أَحْبِسُ الْبُرُدَ وَلَكِنِ ارْجِعْ فَإِنْ كَانَ فِي نَفْسِكَ الَّذِي فِي نَفْسِكَ الآنَ فَارْجِعْ

I do not break treaty, nor do I retain messengers; you can go now, if you find yourself still having the same feeling you have now, you can then come back.

As for the permissibility of making peaceful reconciliation with non-Muslims even it were to be with certain conditions, and that the expiry time must be stated, which should not be more than ten years, that is because of the hadith of Anas ﷺ that is collected by Muslim and some other collectors. He reported that the Messenger of Allah – made a treaty with the Quraysh, and they gave the condition: Whoever comes to us from you, we will not send him back to you, but whoever comes from us to you, you will reject him and send him back

to us. The companions ﴿ﷺ﴾ said: O messenger of Allah, are you going to make that agreement? He ﴿ﷺ﴾ replied them:

نَعَمْ إِنَّهُ مَنْ ذَهَبَ مِنَّا إِلَيْهِمْ فَأَبْعَدَهُ اللَّهُ وَمَنْ جَاءَنَا مِنْهُمْ سَيَجْعَلُ اللَّهُ لَهُ فَرَجًا وَمَخْرَجًا

Yes, whoever goes to them from us, may Allah keep him away from us, and whoever comes to us from them, Allah will give him relief and will pave a way for him.

Al-Bukhari and some other collectors collected it from the hadith of Al-Miswar bin Makhramah and Marwan in a lengthy form, and it is mentioned in it that the period of treaty between the Muslims and the Quraysh was ten years. Moreover, the people of knowledge differ about the permissibility of making a treaty with the non-Muslims on the condition that the Muslims will reject whoever comes to them from the unbelievers fold. Nevertheless, the practice of the Messenger of Allah ﴿ﷺ﴾ indicates the permissibility of that, and nothing has come to abrogate that.

As for the period of agreement, the majority of scholars are of the opinion that it is not permissible that the period of treaty extends beyond ten years. That is so because Allah commanded us to wage war against the unbelievers in His Gracious Book, which therefore makes it impermissible to make a treaty with them without paying any tribute or the like. However, making a treaty with them without any tribute becomes permissible with the practice of the Messenger of Allah ﴿ﷺ﴾ and his acts ﴿ﷺ﴾ then becomes evidence for the permissibility. However, it should only last for the period his own lasted for.

Also, considering the basis that waging war against the unbelievers and combating them is obligatory, it is then not permissible to increase the period beyond ten years. However, some of the people of knowledge are of the opinion that is not permissible for it to be extended beyond four years, while some of them say it should not be extended beyond three years. All these further establish that it is not permissible to extend it beyond ten years.

As for the permissibility of making peaceful reconciliation with the unbelievers with the condition that they will be paying tribute to the Muslims, that is because of what we mentioned earlier concerning the fact that the Prophet ﴿ﷺ﴾ used to call the unbelievers to three things before fighting them. And among those things is the choice of paying tribute. Also, because of the hadith of Amrr bin Awf Al-Ansari ﴿ﷺ﴾ in Sahihayn and some other collections that the Messenger of Allah ﴿ﷺ﴾ sent Abu Ubaydah bin Al-Jaraah ﴿ﷺ﴾ to Al-

Bahrayn to collect their tribute. The Messenger of Allah ﷺ, at the time, made a peaceful reconciliation with the people of Al-Bahrayn and assigned Al-Alaai bin Al-Hadhrami as a leader over them. Abu Ubayd also reported the hadith from Az-Zuhri, but with a Mursal chain. He said: The Messenger of Allah ﷺ took tributes from the people of Al-Bahrayn and they were Pagans.

Abu Dawud reported another related hadith from the hadith of Anas ﷺ that the Prophet ﷺ sent Khalid ﷺ to Ukaydir Dumah. He caught him and brought him to the Messenger of Allah ﷺ, but the Messenger of Allah ﷺ freed him on the agreement of the payment of tribute. Abu Ubayd also collected in the book Al-Amwaal from Az-Zuhri that the first set of people to pay tribute is the people of Najran, and they were Christians.

The Messenger of Allah ﷺ made peaceful agreement with the non-Muslims living under Muslims rule among the people of Yemen, that every mature person pays one Dinar per year or its worth from farm produce. Al-Shafi'i collected it in his Musnad from Umar bin Abdul-Aziz, and it is established from the popular hadith of Muadh ﷺ, reported by Abu Dawud.

Al-Bukhari and some other collectors also collected from the hadith of Al-Mugirah bin Ash-Shubah ﷺ that he said to Kisra's representative, The Messenger of Allah ﷺ commanded us to fight you people until you will worship Allah alone or pay tribute. Al-Bukhari alone also reported from Ibn Abi Najih that he said, I said to Mujahid: Why do the people of Ash-Sham pay four Dinars for their tribute but the people of Yemen pay only one Dinar? He replied: That is done for the purpose of simplicity.

The people of knowledge generally agree upon the permissibility of taking tribute from non-Arab unbelievers: the Jews, the Christians, and the Pagans among them. Malik, al-Awzai, and the Jurists of Ash-Sham are of the opinion that tribute is taken from all kinds of unbelievers, the Arab and non-Arabs among them. Al-Shafi'i also opines that it is taken from all the people of the books. The Pagans will definitely have the same ruling with these people.

However, some of the people who do not see collecting tribute permissible except from non-Arabs made evidence with a hadith of Ibn Abbas ﷺ, collected by Ahmad and At-Tirmidhi, and At-Tirmidhi rated sound. He reported that the Messenger of Allah ﷺ said in his response to Abu Talib in respect of the Quraysh: I do not want anything from them except to proclaim a word that will make all the Arabs submit to them, and make the non-Arabs be paying tribute to them. The Quraysh asked:

What is the word? He replied: Lailaha illa Allah- there is none worthy of being worshiped sincerely except Allah alone.

This hadith does not support their claim, because it does not contradict the

opinion of the permissibility of collecting tribute from Arabs particularly because the Prophet ﷺ in the hadith of Buraydah that was mentioned earlier said:

إِذَا لَقِيتَ عَدُوَّكَ مِنَ الْمُشْرِكِينَ فَادْعُهُمْ إِلَى إِحْدَى ثَلَاثِ خِصَالٍ أَو خِلَالٍ وفِيهَا الجِزيَة

When you meet your enemy from the polytheists, call them to three things.

And one these three things is the call for paying tribute.

As for the fact that the polytheists and the people of the book should be prevented from living in the Arabian peninsula, that is because of the hadith of Ibn Abbas رضي الله عنهما in Sahihayn and some other records that the Prophet ﷺ ordered three things at his death:

أَخْرِجُوا الْمُشْرِكِينَ مِنْ جَزِيرَةِ الْعَرَبِ وَأَجِيزُوا الْوَفْدَ بِنَحْوِ مَا كُنْتُ أُجِيزُهُمْ

Force the polytheists out of the Arabian Peninsula and take care of the delegations (that might come unto you) as I used to do.

There is this addition in that narration: I forgot the third. This doubt is from Sulayman Al-Ahwal, one of the narrators.

Muslim and some other collectors also reported from the hadith of Umar رضي الله عنه that he heard the Messenger of Allah ﷺ saying:

لأُخْرِجَنَّ الْيَهُودَ وَالنَّصَارَى مِنْ جَزِيرَةِ الْعَرَبِ حَتَّى لاَ أَدَعَ إِلاَّ مُسْلِمًا

I shall force the Jews and the Christians out of the Arabian peninsula, until I will not leave anyone therein except the Muslims.

Ahmad also reported from the hadith of 'A'ishah رضي الله عنها that the last order of the Prophet ﷺ was his statement:

لَا يُتْرَكُ بِجَزِيرَةِ العَرَبِ دِينَانِ

Two religions should not be left to reign in the Arabian Peninsula.

That is the report of Ibn Ishaq, he reported it from Salih bin Kaysan, who also reported it from Az-Zuhri, and Az-Zuhri reported from Ubaydullah bin Abdullah bin Utbah, who then reported from 'A'ishah ﴿رضي الله عنها﴾.

Summarily, these evidences indicate that all kinds of the unbelievers should be forced out of the Arabian Peninsula, be it the people of the books or other than them.

Furthermore, some of the scholars argue that these people are only to be forced out of the Hijaaz among the places of Arabian Peninsula, and they made evidence with the hadith collected by Ahmad and Al-Bayhaqi from hadith of Abu Ubaydah bin Al-Jaraah ﴿رضي الله عنه﴾. He said: the last word of the Messenger of Allah ﴿ﷺ﴾ was:

أَخْرِجُوا يَهُودَ أَهْلِ الحِجَازِ ، وَأَهْلِ نَجْرَانَ مِنْ جَزِيرَةِ العَرَبِ

Force the Jews of the people of Hijaaz and those of Najran out from Arabian Peninsula.

This narration, however, cannot limit the scope of the other narrations. That is because it is a known ruling in the knowledge of the Fundamentals of Jurisprudence that any narrations that seems to have the capacity of limiting the scope of the range of another narration but states a ruling that is contained in the one with a larger scope is not good enough to be a limitation.

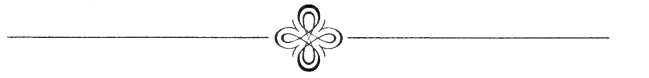
However, Ibn Hajar reported in the book Al-Fath that the opinion of the majority of scholars is that this prohibition has to do with only the Hijaaz from the places contained in Arabian Peninsula, and he mentioned those places of Hijaaz as: Makkah, Al-Madinah, Al-Yammamah and the places around them. He also added that the prohibition according to those scholars should not extend beyond these three places among other places that are referred to as Arabian Peninsula.

Al-Shafi'i in his own comment said that these people should not enter the

Sacred lands except with the permission of the Imam, and Al-Hadawiyah are of the opinion that the Imam can permit them to live in Arabian Peninsula for the benefits of the Muslims.

باب حُكْمُ قِتَال البُغَاة

Chapter 32.4 Fighting the Rebels



It is compulsory to fight the rebellions until they return to the truth. However, the prisoners of war caught from them should not be killed, and not anyone who flees away from the battle among them be chased; rather he should be allowed to run away. In addition, the injured among them should not be further punished if caught, and their wealth should not be taken as booty.

Explanation:

I say: As for the obligation of fighting the rebellions until they return to the truth, that is because of the word of Allah:

وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ
إِحْدَاهُمَا عَلَى الْأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ

And if two parties or groups among the believers fall to fighting, then make peace between them both, but if one of them rebels against the other, then fight you all against the one that rebels till it complies with the command of Allah... [Al-Hujuraat: 9]

Allah, The Most High, commanded that the rebellious party be fought until they return to the command of Allah, and there is no difference between rebelling against the authority and rebelling against some groups of the Muslims.

As for the fact that the prisoners of war caught from them should not be killed, till the end of the issues raised in the summary, that is because of what Al-Hakim and Al-Bayhaqi reported from the hadith of Ibn Umar ﷺ. He reported that the Messenger of Allah ﷺ said to Ibn Mas'ud ﷺ: O Ibn Ummi Abd! What is the ruling concerning the rebellions of my nation? He replied: Allah and His messenger ﷺ knows best. The Messenger of Allah ﷺ then said: Whoever flees away from them during battle should not be chased, the injured among them should not be punished, and the prisoners of war caught from them should not be killed. In another narration, it is reported that he ﷺ said: The injured among them should not be chased and their wealth should be held as booties.

Al-Hakim did not comment about this hadith, but Ibn Adyy commented that it is not known to be a good hadith, while Al-Bayhaqi said that it is a weak hadith. The author of Buluug Al-Maraam claimed that Al-Hakim authenticated it, but that is a mistake, because the chain of its transmission contains Kawthar bin Hakim and he is an abandoned narrator. However, it is established that such report came from the statement of Ali ﷺ. It is also established that Ali ﷺ commanded that it should be proclaimed on the day of the battle of Sifayn, and it is not real that the report was linked to the Messenger of Allah ﷺ.

Ibn Abi Shaybah, Al-Hakim, and Al-Bayhaqi also reported from the path of Abu Khayr from the authority of Ali ﷺ with the wording: Alis crier proclaimed on the day of Al-Jamal: Behold, you should not chase anyone who flees away among them and never you punish the injured.

Said bin Mansur reported from Mirwaan bin Hakam that he said: Ali's crier proclaimed on the day of Al-Jamal, Do not follow their run away person and do not hold down the injured person among them; whoever closes his door is safe, and whoever surrenders from fighting is also safe.

Ahmad reported another hadith, as recorded by Athram, and he made evidence with it, that Az-Zuhri said: Commotion was ignited and the companions of the messenger of Allah ﷺ were present in multitude, but they agreed that there is no retribution, or would they take people's wealth upon establishing the Qur'an[58] except what is found freely.

Al-Bayhaqi also reported from Abu Umaamah ﷺ that he said: I witnessed the battle of Sifayn, they did not punish the injured, or chase a fleeing person, or render the property of the killed to the killer, (as it is the practice in the battle with unbelievers). He also reported from Ali ﷺ that he said on the day of Al-Jamal: If you are victorious over the people – he meant the opponent party –, do not chase anyone who flees away and do not punish any injured person if caught. Look for the weapons they came with to the war and pick them up, and whatever things they leave behind is for their heirs.

Al-Bayhaqi commented thus, on this narration: There is a disconnection in the chain of transmission of this narration, and what is authentic about this event is that Ali ﷺ did not take anything from them, nor did he render the property of anyone killed to the killer.

More so, all the narrations that establish the prohibitions of killing a Muslim or eat his money unlawfully can further corroborate this opinion. Neither the soul of a Muslim nor his property is permissible to be taken unlawfully. Moreover,

58 It is meant that they will take no one's property as spoils of war with the excuse of implementing the verse that commands taking the war booty during wars.

the meaning of further punishing the injured person is rushing to get him killed, or seizing the opportunity of his weakness to kill.

Moreover, the consensus of the companions reported by Az-Zuhri over non-retribution in the case of the companions, indicates that there is no killing of revenge at the time of upset and tribulations.

Al-Bayhaqi reported the narration from Az-Zuhri with another wording, he said: The first tribulation was ignited and a large number of the companions of the Prophet ﷺ who fought the battle of Badr with him were still alive. We learnt that they resolved the event as a trial, so no retribution would be carried upon anyone who killed another person with the aim of taking revenge as Qur'an commanded. In addition, they agreed there would not be any punishment upon anyone who enslaved any woman as a prisoner of war, as there would not be any of such woman as well. And that there would not be swearing of curse between her and her husband, and that she should not be abused of illicit act by anyone, and if anyone did, the person would be flogged as a punishment for false accusation. In addition, the woman would go back to her former husband after her iddah from the later, and her first husband would be one to inherit her.

It is also mentioned in Al-Bahr that scholars generally agree that it is not permissible to take rebellions as prisoners of war or their weapons and other properties as booties, because they are still upon the religion of Islam. However, he reported from a large number of Al-Itrah that they are of the opinion that it is permissible to take their weapons and other things they came with as booty. He also reported from An-Nafs Az-Zakiyyah, Al-Hanafiyyah and Al-Shafi'i that nothing should be taken from them.

بَاب مِنْ أَحْكَام الإِمَامَة

Chapter 32.5 Some Rulings Concerning Leadership



Obedience to the Islamic authorities is compulsory except in disobedience to Allah, and it is not permissible to rebel against them so far as they perform As-Salaat and no act of disbelief is apparent on them. Furthermore, it is compulsory for the followers to be patient with a tyrant leader and to render advice to him. The authorities also have the responsibility to protect their followers and assist them over any oppression, so also, it is their responsibility to cover the faults of their followers and direct their affairs with the laws of Allah, the Shari'ah, in matters relating to their private affairs, religion, and properties. So also, it is their responsibility to render Allah's wealth in their custody, to take care of the affairs of their followers, they should not prefer themselves excessively to their subjects, and they should be extremely good in their intentions and conducts.

Explanation:

I say: As for the obligation of obeying the authority except in disobedience to Allah, that is because of the word of Allah, The Most High:

أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ

Obey Allah and obey the Messenger (Muhammad ﷺ) and those in the position of authority among you [An-Nisa: 59]

Also because of the narrations that are reported in successions concerning the obligation of obeying the authority.

Among these narrations is the hadith of Anas ﷺ that is collected by Al-Bukhari. He ﷺ reported that the Messenger of Allah ﷺ said:

اسْمَعُوا وَأَطِيعُوا وَإِن اسْتُعْمِلَ عَلَيْكُمْ عَبْدٌ حَبَشِيٌّ كَأَنَّ رَأْسَهُ زَبِيبَةٌ
مَا أَقَامَ فِيكُمْ كِتَاب اللَّه

Listen and obey, even if an Abassanian slave whose head is like a raisin assumes authority over you, so far he is ruling with the book of Allah.

It is also collected in Sahihayn from the hadith of Abu Hurairah ﴿ﷺ﴾ that Messenger of Allah ﴿ﷺ﴾ said:

مَنْ أَطَاعَنِي فَقَدْ أَطَاعَ اللَّهَ وَمَنْ عَصَانِي فَقَدْ عَصَى اللَّهَ وَمَنْ يُطِعِ
الأَمِيرَ فَقَدْ أَطَاعَنِي وَمَنْ يَعْصِ الأَمِيرَ فَقَدْ عَصَانِي

Whoever obeys me has indeed obeyed Allah, and whoever disobeys me has indeed disobeys Allah, so also, whoever obeys the leader has indeed obeyed me, and whoever disobeys the leader has indeed disobeys me.

Also in Sahihayn, it is collected from the hadith of Ibn Umar ﴿ﷺ﴾ that the Prophet ﴿ﷺ﴾ said:

عَلَى الْمَرْءِ الْمُسْلِمِ السَّمْعُ وَالطَّاعَةُ فِيمَا أَحَبَّ وَكَرِهَ إِلاَّ أَنْ يُؤْمَرَ
بِمَعْصِيَةٍ فَإِنْ أُمِرَ بِمَعْصِيَةٍ فَلاَ سَمْعَ وَلاَ طَاعَةَ

It is compulsory upon any Muslim to listen and obey the authority in what pleases him and what he dislikes, except when he is commanded to commit sin; if he commanded to commit sin, he should not listen or obey in that.

The narrations under this section are many; we have only mentioned those ones for reference sake.

As for the prohibition of rebelling against them so far the performance of As-Salaat and no act of disbelief is apparent on them, that is because of the hadith of Awf bin Malik ﴿ﷺ﴾ that is collected by Muslim and some other collectors. He ﴿ﷺ﴾ reported that he heard the Messenger of Allah ﴿ﷺ﴾ saying:

خِيَارُ أَئِمَّتِكُمُ الَّذِينَ تُحِبُّونَهُمْ وَيُحِبُّونَكُمْ وَتُصَلُّونَ عَلَيْهِمْ وَيُصَلُّونَ عَلَيْكُمْ وَشِرَارُ أَئِمَّتِكُمُ الَّذِينَ تُبْغِضُونَهُمْ وَيُبْغِضُونَكُمْ وَتَلْعَنُونَهُمْ وَيَلْعَنُونَكُمْ

The best of your leaders are those you love and they also love you, and you pray for them and they also pray for you, and the worst of your leaders are those you hate and they also hate you, and you curse them and they also curse you.

He added, we said: O messenger of Allah, should we not rebel against them? He replied:

لاَ ; مَا أَقَامُوا فِيكُمُ الصَّلاَةَ أَلاَ مَنْ وَلِيَ عَلَيْهِ وَالٍ فَرَآهُ يَأْتِي شَيْئًا مِنْ مَعْصِيَةِ اللَّهِ فَلْيَكْرَهْ مَا يَأْتِي مِنْ مَعْصِيَةِ اللَّهِ وَلاَ يَنْزِعَنَّ يَدًا مِنْ طَاعَةٍ

No, so far as they perform As-Salaat, No; so far as they perform As-Salaat. Behold, whoever has a leader whom he sees committing sins against Allah, should hate that he commits sins against Allah, but must not desist from obeying him.

Muslim and some other collectors also reported from the hadith of Hudhayfah bin Al-Yamman (ﷺ) that the Messenger of Allah (ﷺ) said:

يَكُونُ بَعْدِي أَئِمَّةٌ لاَ يَهْتَدُونَ بِهُدَايَ وَلاَ يَسْتَنُّونَ بِسُنَّتِي وَسَيَقُومُ فِيهِمْ رِجَالٌ قُلُوبُهُمْ قُلُوبُ الشَّيَاطِينِ فِي جُثْمَانِ إِنْسٍ

Some leaders shall come after me who would not guide people with my guidance or follow my practices in their affairs; the hearts of some of them would be like that of the Devil – Shaytan — covered in human body.

He (ﷺ) added: I said, O Messenger of Allah, how do I do if I should witness that? He then replied:

تَسْمَعُ وَتُطِيعُ لِلأَمِيرِ وَإِنْ ضُرِبَ ظَهْرُكَ وَأُخِذَ مَالُكَ فَاسْمَعْ وَأَطِعْ

Listen and obey your leader, even if he decides to kill you or confiscate your properties; you must listen and obey him.

Muslim and some other collectors also reported from the hadith of Arfajah Al-Ashjai ﷺ. He said, I heard the messenger of Allah ﷺ saying:

مَنْ أَتَاكُمْ وَأَمْرُكُمْ جَمِيعٌ عَلَى رَجُلٍ وَاحِدٍ يُرِيدُ أَنْ يَشُقَّ عَصَاكُمْ أَوْ يُفَرِّقَ جَمَاعَتَكُمْ فَاقْتُلُوهُ

Whoever comes unto you, while you have collectively agreed to the leadership of someone among you, wanting to break your voice or cause disparity amongst you, kill him.

There is another hadith in Sahihayn from the hadith of Ubadah bin As-Saamit ﷺ where he said: We pledged allegiance to the Messenger of Allah ﷺ to listen and obey at our wishes and dislikes, distress and ease, and even when our leader are self-centred. Also, do not contend power with the leader except we discover him engaging in an open disbelief; that which we have proof for from (the Book of) Allah.

Al-Khataabi mentioned that the meaning of his statement ﷺ: open disbelief is the act of disbelief that is very conspicuous.

Muslim also reported another hadith concerning the issue, from the hadith of Abu Hurairah ﷺ, that the Messenger of Allah ﷺ said:

مَنْ خَرَجَ مِنَ الطَّاعَةِ وَفَارَقَ الْجَمَاعَةَ فَمَاتَ مَاتَ مِيتَةً جَاهِلِيَّةً

Whoever turns aside from obedience to authority and deserts the fold of the Muslims, if he dies in that state, he dies on the path of ignorance.

He also reported the like of it from the hadith of Ibn Umar ﷺ.

In Sahihayn from the hadith of Ibn Umar ﷺ, he reported that the Messenger of Allah ﷺ said:

مَنْ حَمَلَ عَلَيْنَا السِّلَاحَ فَلَيْسَ مِنَّا

Whoever raises weapon against is not part of us.

Al-Bukhari and Muslim reported this hadith from the hadith of Abu Musa ﷺ. Moreover, Muslim collected it alone from the hadith of Abu Hurairah and Salamah bin Al-Akwa ﷺ. The narrations under this section are so many that we cannot exhaust them in this discussion.

More so, the opinion we established here is the opinion of the majority of the people of knowledge. Meanwhile, some people are of the opinion that it is permissible to rebel against an unjust leader; some even said rebelling against an unjust leader is compulsory, making evidence with the narrations that discuss the obligation of commanding good and forbidden evils, which are commanded in the Book of Allah and the Sunnah of His Messenger ﷺ. However, these two opinions are not correct because the narrations that discuss the obligation of commanding good and forbidden evil have wider scopes than the narrations under this section. And it is a known rule that there will be no contradiction between the narrations with wider range of application and those that can limit their power. That is because the narrations that have the power to limit the scope of those with wider applications will exceptionally establish the ruling for which they have come, and at the same will not stop those with wider applications to do their general work.

Therefore, it will be said that those that had that opinion among the pious predecessors have only said that with their understanding that could be rejected if it contradicts the established texts of the religion, particularly when a large number of them established the correct opinion. However, it should be known that the pious predecessors generally, are most submissive to Allah and most devoted to the practice of the Messenger of Allah ﷺ than those that came after them. Therefore, such understanding should not be held as an excuse to disregard their status.

As for the obligation of being patient with the unjust authorities, that is because of the narrations we mentioned earlier concerning that. It is also reported in Sahihayn from the hadith of Ibn Abbas ﷺ that the Messenger of Allah ﷺ said:

مَنْ رَأَى مِنْ أَمِيرِهِ شَيْئًا يَكْرَهُهُ فَلْيَصْبِرْ فَإِنَّهُ مَنْ فَارَقَ الْجَمَاعَةَ شِبْرًا فَمَاتَ فَمِيتَةٌ جَاهِلِيَّةٌ

Whoever sees anything he hates from his leader should be patient, because whoever deviates from the fold of the Muslims in only an arm's length and if he dies in this state, dies on the path of ignorance.

Also in Sahihayn from the hadith of Abu Hurairah ﷺ it is reported that the Prophet ﷺ said:

أَعْطُوهُمْ حَقَّهُمْ فَإِنَّ اللَّهَ سَائِلُهُمْ عَمَّا اسْتَرْعَاهُمْ

Discharge your responsibility to them, Allah will ask them of the responsibility He placed on them.

Ahmad also reported from the hadith of Abu Dhar ﷺ that the Messenger of Allah ﷺ said to him: O Abu Dhar, what would do if you were to be under the authority that will deny your right from the spoils of war? He replied: By He Who sent you with truth; I will fight for my right until I am killed. The Prophet ﷺ then said: Do I inform you of what is better for you than that you have said? Exercise patience until you meet me. The narrations under this section are also too many to be exhausted.

As for the obligation of rendering advice to them, that is because of what is established in Sahih that the Prophet ﷺ said:

الدِّينُ النَّصِيحَةُ: لِلَّهِ وَلِكِتَابِهِ وَلِرَسُولِهِ وَلِأَئِمَّةِ الْمُسْلِمِينَ وَعَامَّتِهِمْ

The religion is all about advice (that is, discharging of responsibilities): to Allah, His Book, and His Messenger ﷺ, and to the Muslims authorities and the general Muslims.

That hadith is also reported from the hadith of Tamim Ad-Dari ﷺ with that

wording. The narrations concerning advising one another are many, and the best of the people to offer advice to are the authorities.

As for the fact that it is compulsory upon the authorities to protect their followers, and all other issues raised in the summary, that is because these issues are known as such from the evidences of both the Book of Allah and the practice of the Prophet ﷺ. This avenue may not be appropriate to discuss them extensively, but there is no difference of opinion about the correctness of anyone of them; they are all as said. More so, those things are the responsibilities Allah, who enjoined the Muslims to assign leaders from amongst themselves. Therefore, whoever does not discharge them to his followers among the leaders and the authorities does not discharge the rights of his followers to them, then he might as well discharge his responsibility, rather, it is a betrayal.

It is established in Sahihayn and some other records from the hadith of Maqal bin Yasaar ﷺ that he said: I heard the Messenger of Allah ﷺ saying:

مَا مِنْ عَبْدٍ يَسْتَرْعِيهِ اللَّهُ رَعِيَّةً يَمُوتُ يَوْمَ يَمُوتُ وَهُوَ غَاشٌّ لِرَعِيَّتِهِ إِلاَّ حَرَّمَ اللَّهُ عَلَيْهِ الْجَنَّةَ

There is no servant of Allah whom He placed in the position of authority over some people, and dies on the day he is destined to die while he has betrayed his subjects except that Allah prohibits him from entering paradise.

In another version of Muslim and some other collectors, from the hadith of 'A'ishah ﷺ, it is reported that she said: I heard the messenger of Allah ﷺ saying:

اللَّهُمَّ مَنْ وَلِيَ مِنْ أَمْرِ أُمَّتِي شَيْئًا فَرَفَقَ بِهِمْ فَارْفُقْ بِهِ

O Allah! Whoever assumes leadership over any affair of nation and he is lenient with them, be lenient with him.

In summary, it is up to the Imam and people of authority to emulate the Messenger of Allah ﷺ and the rightly guided Caliphs in matters they engage in and those they abstain from. If they do that they will have the share of the good promises that are mentioned in both the Book of Allah and the Sunnah of

His Messenger ﷺ for the leaders, and which is significantly the success both in this life and the hereafter.

With the help of Allah, this is the end of what we wish to explain concerning the issues contained in the summary book, and to Allah belongs all praises.

The completion of this work is on Saturday, 12th of Jumada al-Akhirah, 1220, from the day of the migration of the Prophet ﷺ from Makkah to Al-Madinah. May the best of praises and blessing be upon him.